General Statutes of North Carolina

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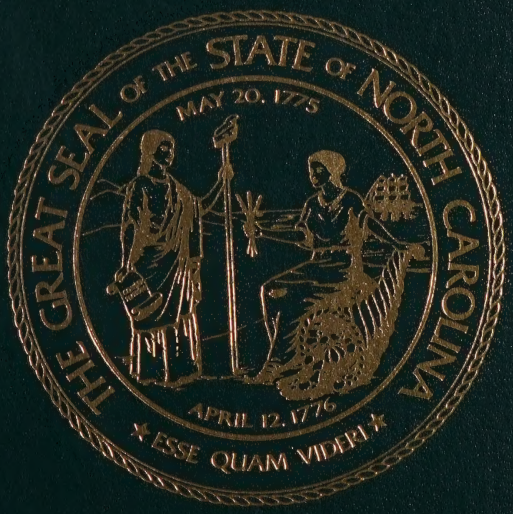

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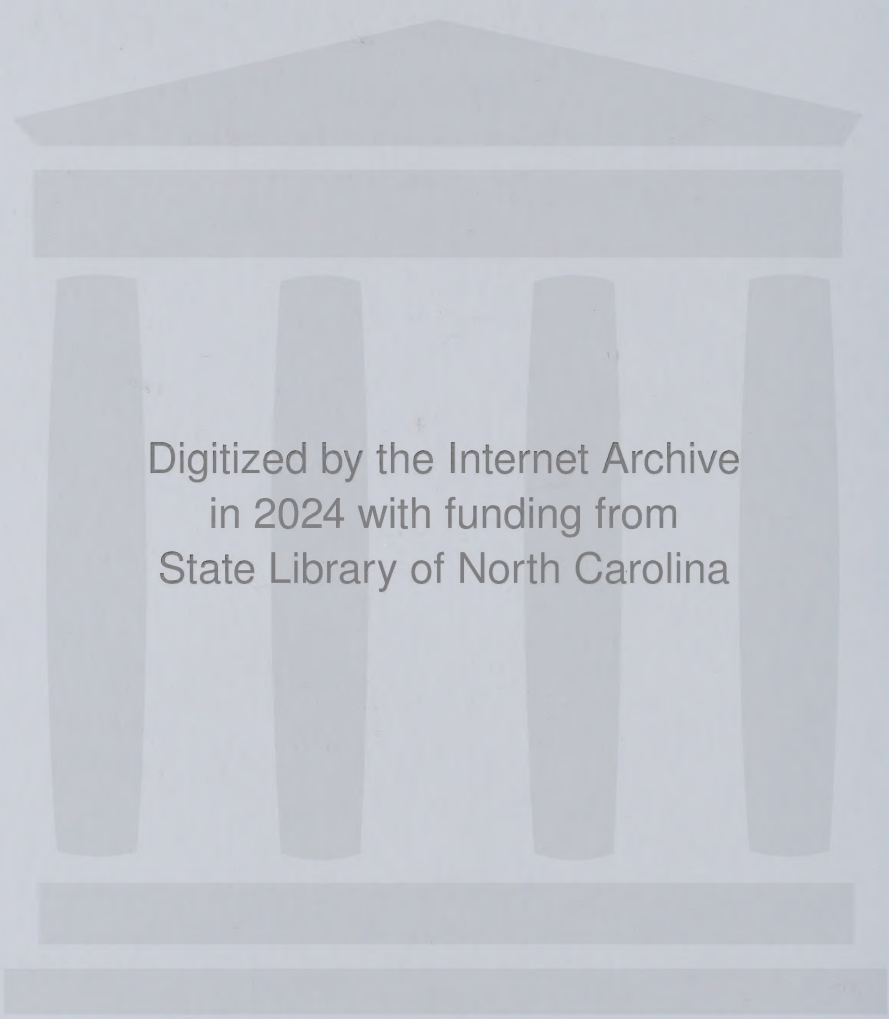

GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

2002 INTERIM SUPPLEMENT

Volume 2

Chapters 115C to 168A
NC Constitution
US Constitution
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

LexisNexis™

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45411-10 (interim supplement hard bound set)
4660011 (interim supplement soft bound set)

ISBN 0-8205-9515-2 (interim supplement hard bound set)
ISBN 0-3271-5351-2 (interim supplement soft bound set)

Matthew Bender & Company, Inc.
P.O. Box 7587, Charlottesville, VA 22906-7587

www.lexis.com

(Pub. 46405)

Preface

This Volume contains the general laws of a permanent nature enacted by the General Assembly at the 2002 Extra Session and the 2002 Regular Session, which are within Chapters 2002-1 through 2002-190, and brings to date the annotations included therein.

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 LexisNexis, Charlottesville, Virginia.

ROY COOPER
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2002 Extra Session and the 2002 Regular Session affecting Chapters 2002-1 through 2002-190.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court posted on LEXIS through August 16, 2002, decisions of the North Carolina Court of Appeals posted on LEXIS through September 17, 2002, and decisions of the appropriate federal courts posted through September 13, 2002. These cases will be printed in the following reporters:

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 80, no. 5, p. 1896.
Wake Forest Law Review through Volume 37, Pamphlet No. 2, p. 662.
Campbell Law Review through Volume 24, no. 2, p. 346.
Duke Law Journal through Volume 51, no. 6, p. 1857.
North Carolina Central Law Journal through Volume 24, no. 1, p. 180.
Opinions of the Attorney General.

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 General Statutes. 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 of the General Statutes for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that 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

December 1, 2002

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2002 Interim Supplement to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

ROY COOPER

Attorney General of North Carolina

Table of Contents

For complete listing of chapters set out in the North Carolina General Statutes, see the Table of Contents included in Volume 1.

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The General Statutes of North Carolina
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Chapter 115C.

Elementary and Secondary Education.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Definitions and Preliminary Provisions.

§ 115C-1. General and uniform system of schools.

Editor's Note. —

Session Laws 2002-126, s. 7.18(a)-(e), provides: "(a) The State Board of Education, in consultation with the Board of Governors of The University of North Carolina and the Education Cabinet, shall review teacher preparation programs and the continuing certification process to determine how these programs can be modified to enhance the continuing teacher certification process and to reduce the burden the continuing certification process places on newly certified teachers. This evaluation shall consider strategies for streamlining the current continuing certification process and reducing the amount of documentation required in the applicant's portfolio.

"The State Board of Education shall suspend the portfolio requirement for all teachers who are required, under the current law, to submit portfolios from August 1, 2002, through June 30, 2004. Teachers who are not required to submit portfolios during the period the portfolio requirement is suspended shall be subject to interim requirements adopted by the State Board and shall complete the interim requirements. The State Board of Education shall make every effort to insure that any interim requirements do not require significant and unnecessary paperwork, effort, and administrative burden. Prior to implementation of the interim requirements, the State Board of Education shall report to the Joint Legislative Education Oversight Committee on the proposed requirements.

"(b) The State Board of Education shall contract with an outside consultant to study and propose modifications to the current North Carolina initial certification, continuing certification, and recertification programs that ensure high standards, support for teachers, and high retention rates. Specifically, the contractor shall:

"(1) Review the administration and implementation of the certification programs and identify significant strengths and weaknesses of the programs;

"(2) Identify issues related to administration, staffing, and paperwork at the school, local, and State levels;

"(3) Investigate and identify communication concerns about the certification programs between the school, local, and State levels;

"(4) Randomly survey and interview participating teachers and administrators regarding key aspects of the certification programs and ways to improve them;

"(5) Examine the possibility of making the programs more focused on and supportive of early teacher development and integrating them more appropriately into a teacher's daily work;

"(6) Examine the portfolios previously submitted and identify the elements that are most troublesome to teachers, schools, and school systems;

"(7) Identify alternatives to the portfolio approach and ways to keep paperwork requirements to a minimum;

"(8) Review the State's mentor program and the mentor's role in support of certification efforts to determine whether the two programs are complementary;

"(9) Examine the effect of the certification programs on teacher retention, using valid evidence; and

"(10) Examine the impact the certification programs have on improving teaching practices, using valid evidence.

"(c) The State Board of Education shall use the results of the study to make recommendations to:

"(1) Improve the administration and implementation of the certification programs, including improving the process for teachers;

"(2) Resolve the issues surrounding the portfolio process and the collection of professional evidence during initial certification;

"(3) Reduce paperwork and bureaucracy in initial certification, continuing certification, and recertification for teachers, schools, and school systems;

"(4) Provide schools and districts incentives and flexibility to participate in more rigorous certification processes;

"(5) Effectively use information regarding teacher supply and demand, standards and retention to inform policy decisions;

"(6) Improve the relationship and coordination between the certification programs and mentoring programs;

"(7) Provide appropriate sample work to teachers, including lesson plans, unit plans, and other professional work required during initial certification; and

"(8) Provide ongoing program evaluation to monitor the quality of the programs and to inform policymakers.

"(d) The State Board of Education shall enlist the assistance of the Southern Regional Education Board in evaluating the responses to the request for proposals. Prior to awarding the contract for the consultant study, the State Board shall consult with the Joint Legislative Education Oversight Committee.

"The State Board shall use federal No Child Left Behind State Grants for Improving Teacher Quality, to the extent possible, to cover the cost of the consultant and study.

"The State Board shall report the findings of the consultant and the recommendations required by this section to the Joint Legislative Education Oversight Committee by January 1, 2004.

"(e) The Joint Legislative Education Oversight Committee shall make recommendations to the General Assembly on any changes to law or policy affecting certification of teachers on or after August 1, 2004, after reviewing the findings and recommendations of the consultant and State Board of Education."

Session Laws 2002-126, s. 7.25(a)-(c), provides: "(a) The class size allotment for first grade for the 2002-2003 school year shall be one teacher for every 18 students. The average class size for first grade within a local school administrative unit shall not exceed 21 students. The maximum class size for first grade for individual classes for the 2002-2003 fiscal year shall be 24 students.

"(b) For the 2002-2003 school year only, a local school administrative unit shall use these additional teacher positions to reduce class size in first grade.

"(c) For the 2003-2004 school year and subsequent school years, the maximum class size limit for first grade shall be based on an allotment ratio of one teacher for every 18 students."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

ARTICLE 2.

State Board of Education.

§ 115C-10. Appointment of Board.

OPINIONS OF ATTORNEY GENERAL

Appointment of State Employees to Board. — The Governor has the authority to appoint any number of state employees to the State Board of Education and the state employees so appointed and confirmed have the right to serve on the board, provided they are not employees of the Department of Public Instruction. See opinion of Attorney General to Franklin E. Freeman, Jr., Senior Assistant for Governmental Affairs, Office of the Governor, 2001 N.C. AG LEXIS 16 (6/27/2001).

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

(1) Financial Powers. — The financial powers of the Board are set forth in Article 30 of this Chapter.

(1a) To Submit a Budget Request to the Director of the Budget. — The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143-6. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.

(2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

(3), (4) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 1.

(5) Apportionment of Funds. — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. — When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.

(7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The minimum pay for a substitute teacher who holds a teaching certificate shall be sixty-five percent (65%) of the daily pay rate of an entry-level teacher with an "A" certificate. The minimum pay for a substitute teacher who does not hold a teaching certificate shall be fifty percent (50%) of the daily pay rate of an entry-level teacher with an "A" certificate. The pay for noncertified substitutes shall not exceed the pay of certified substitutes.

Local boards may use State funds allocated for substitute teachers to hire full-time substitute teachers.

If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an "A" certificate.

(9) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program.

The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.

The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.

c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1.

c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter.

Each report shall be based on building-level data for the prior school year.

c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(9a) Power to Develop Content Standards. — The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to enter the workforce and also shall be aligned with the coursework required for admission to the constituent institutions of The University of North Carolina. The Board shall develop and implement a plan for end-of-course tests for the minimum courses required for admission to the constituent institutions. All end-of-course tests shall be aligned with the content standards.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development and other university activity in the State's public schools align with the State Board's priorities.

(9b) Power to Develop Exit Exams. — The Board shall develop a plan to implement high school exit exams, grade-level student proficiency

benchmarks, student proficiency benchmarks for academic courses required for admission to constituent institutions of The University of North Carolina, and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce. The State Board may develop student proficiency benchmarks for other courses offered to secondary school students. The high school exit exams and student proficiency benchmarks shall be aligned with G.S. 115C-12(9a) and may contain pertinent components of the school-based accountability annual performance goals.

(10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. — The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(11) Power to Conduct Education Research. — The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes.

(12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. — The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

(13) Power to Purchase Liability Insurance. — The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.

(14) Duty to Provide Personnel Information to Local Boards. — Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.

(15) Duty to Develop Noncertified Personnel Position Evaluation Descriptions. — The Board is authorized and directed to develop position

evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.

(16) Power with Regard to Salary Schedules. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.

b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee, including experience in other local school administrative units. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.

(17) Power to provide for school transportation programs. The State Board of Education is authorized and empowered to promulgate such

policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and regulations shall include, but are not limited to, fund allocations and fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with G.S. 115C-366.

(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information.

a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network. All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year.

c. The State Board of Education 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. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.

d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes. The revised Uniform Education Reporting System shall be implemented beginning with the 1999-2000 school year.

(19) Duty to Identify Required Reports and to Eliminate Unnecessary Reports and Paperwork. — Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year.

The State Board of Education shall adopt policies to ensure that local school administrative units are not required by the State Board of Education, the State Superintendent, or the Department of Public Instruction staff to (i) provide information that is already available on the student information management system or housed within the

Department of Public Instruction; (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 foregoing, the State Board may require information available on its student information management system or require the same information twice if the State Board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

(20) Duty to Report Appointment of Caretaker Administrators and Boards. — Pursuant to G.S. 120-30.9G the State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(21) Duty to Monitor Acts of School Violence. — The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board.

(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. — The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local board of education to report the information to the State Board in a standard format adopted by the State Board.

(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. — The State Board of Education may adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

(24) Duty to Develop Policies and Guidelines for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. — The State Board of Education shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt guidelines to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools.

(25) Duty to Report to Joint Legislative Education Oversight Committee. — Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility.

(26) Duty to Monitor and Make Recommendations Regarding Professional Development Programs. — The State Board of Education shall identify State and local needs for professional development for professional public school employees based upon the State's educational priorities for improving student achievement. The State Board also shall recommend strategies for addressing these needs. The strategies must be research-based, proven in practice, and designed for data-driven evaluation. The State Board shall report its findings and recommendations to the Joint Legislative Education Oversight Committee, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Board of Governors of The University of North Carolina prior to January 15, 2002, and shall review, revise, and resubmit those findings and recommendations annually thereafter. The State Board shall evaluate the reports submitted by the Board of Governors under G.S. 116-11(12a) to determine whether the programs for professional development provided by the Center for School Leadership Development address the State and local needs identified by the State Board and whether the programs are using the strategies recommended by the State Board. Prior to January 15th of each year, the State Board shall report the results of its analysis to the Board of Governors and to the Joint Legislative Education Oversight Committee.

(27) Reporting Dropout Rates, Suspensions, Expulsions, and Alternative Placements. — The State Board shall report annually to the Joint Legislative Education Oversight Committee and the Commission on Improving the Academic Achievement of Minority and At-Risk Stu-

dents on the numbers of students who have dropped out of school, been suspended, been expelled, or been placed in an alternative program. The data shall be reported in a disaggregated manner and be readily available to the public. The State Board shall not include students that have been expelled from school when calculating the dropout rate. The Board shall maintain a separate record of the number of students who are expelled from school.

(27a) Reducing School Dropout Rates. — The State Board of Education shall develop a statewide plan to improve the State's tracking of dropout data so that accurate and useful comparisons can be made over time. The plan shall include, at a minimum, how dropouts are counted and themethodology for calculating the dropout rate, the ability to track students movements among schools and districts, and the ability to provide information on who drops out and why.

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. — The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.

c. 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:

1. 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).
2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

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 public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school 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. This form shall be used for students enrolled in public schools or charter schools.

(29) To issue special high school diplomas to veterans of World War II. — The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of World War II who request special diplomas and have not previously received high school diplomas.

(30) Duty to Adopt Model Guidelines and Policies for the Establishment of Local Task Forces on Closing the Academic Achievement Gap. — The State Board shall adopt a Model for local school administrative units to use as a guideline to establish local task forces on closing the academic achievement gap at the discretion of the local board. The purpose of each task force is to advise and work with its local board of education and administration on closing the gap in academic achievement and on developing a collaborative plan for achieving that goal. The State Board shall consider the recommendations of the Commission on Improving the Academic Achievement of Minority and At-Risk Students to the 2001 Session of the General Assembly in establishing its guidelines.

(31) To Adopt Guidelines for Individual Diabetes Care Plans. — The State Board shall adopt guidelines for the development and implementation of individual diabetes care plans. The State Board shall consult with the North Carolina Diabetes Advisory Council established by the Department of Health and Human Services in the development of these guidelines. The State Board also shall consult with local school administrative unit employees who have been designated as responsible for coordinating their individual unit's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board shall refer to the guidelines recommended by the American Diabetes Association for the management of children with diabetes in the school and day care setting and shall consider recent resolutions by the United States Department of Education's Office of Civil Rights of investigations into complaints alleging discrimination against students with diabetes.

The guidelines adopted by the State Board shall include:

a. Procedures for the development of an individual diabetes care plan at the written request of the student's parent or guardian, and involving the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, the school nurse if available, and other appropriate school personnel.

b. Procedures for regular review of an individual care plan.

c. Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management, and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student. The State Board shall ensure that the information and allowable actions included in a diabetes care plan as required in this subdivision meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting.

d. Information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

The State Board shall ensure that these guidelines are updated as necessary and shall ensure that the guidelines and any subsequent changes are published and disseminated to local school administrative units. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3; 1989, c. 585, s. 1; c. 752, s. 65(c); c. 778, s. 6; 1991, c. 529, s. 3; c. 689, s. 196(b); 1991 (Reg. Sess., 1992), c. 880, s. 3; c. 900, s. 75.1(e); 1993, c. 321, ss. 125, 133(a), 139(b); 1993 (Reg. Sess., 1994), c. 769, ss. 19(a), 19.9; 1995, c. 60, s. 1; c. 324, s. 17.15(a); c. 450, s. 4; c. 509, s. 59; 1995 (Reg. Sess., 1996), c. 716, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.4, 18.28(a); 1997-18, s. 15(a), (c)-(e); 1997-221, s. 12(a); 1997-239, s. 1; 1997-443, s. 8.27(a), (e); 1997-443, s. 8.29(o), (u); 1997-507, s. 3; 1998-153, s. 16(b); 1998-212, ss. 9.16(a), 9.23; 1999-237, s. 8.25(d); 1999-243, s. 5; 1999-397, s. 3; 2001-86, s. 1; 2001-151, s. 1; 2001-424, ss. 31.4(a), 28.30(e), (f); 2002-103, s. 1; 2002-126, s. 7.15; 2002-159, s. 63; 2002-178, s. 1(a).)

Professional Development for Public School Professionals. — Session Laws 2001-424, ss. 31.4(c) to (e), as amended by Session Laws 2002-126, s. 7.17(h), provides: "(c) The Joint Legislative Education Oversight Committee shall hire an independent consultant to study and make recommendations regarding professional development for public school professionals in North Carolina. The consultant shall study:

"(1) The professional development programs administered under the UNC Center for School Leadership Development with regard to their mission, governance structure, efficiency, and objectively measurable effectiveness in increasing student achievement.

"(2) The feasibility and merits of consolidating and reducing the number of professional development programs.

"(3) The possibility of regionalizing professional development programs and using a cooperative arrangement between higher educational institutions and community colleges in a region to achieve the goal.

"(4) The professional development support offered by the Department of Public Instruction.

"(5) The use of professional development funds allocated to local school administrative units and individual schools.

"(6) National research regarding effective methods for delivering professional development that is shown to improve student achievement.

"The consultant shall report these findings to the Joint Legislative Education Oversight Committee and also shall make recommendations regarding how existing State funds should be utilized to provide effective and efficient professional development for public school professionals.

"(d) The Joint Legislative Education Oversight Committee shall review the consultant's findings and recommendations and shall submit to the 2003 General Assembly recommendations to streamline, reorganize, and improve the delivery of professional development for public school professionals. The recommendations may address revisions to program governance and mission, reallocation of funds, methods of program delivery, and methods to institute ongoing program evaluation.

"(e) The Joint Legislative Education Oversight Committee shall review the reports that are required to be made to the Committee. The purpose of the review is to determine which reports must include information that is research-based, proven in practice, and designed for data-driven research. The Committee may make recommendations for changes in these reports based upon the Committee's findings."

Editor's Note. — Session Laws 2002-103, s. 3, provides that the State Board of Education shall report no later than September 1, 2003, to the Joint Legislative Education Oversight Committee on the Board's progress regarding the adoption, dissemination, and implementation of the guidelines under Sections 1 and 2 of the act.

Session Laws 2002-103, s. 4, provides, in part, that the guidelines under Section 1 of the act shall be adopted no later than January 15, 2003, and shall be implemented under Section 2 of the act beginning with the 2003-2004 school year.

Session Laws 2002-178, s. 1(b), provides: "The State Board of Education shall make a report on this plan [the statewide plan addressed in G.S. 115C-12(27a)] to the Joint Legislative Education Oversight Committee by December 15, 2002."

Session Laws 2002-178, s. 2(a)-(c), provides: "(a) The State Board of Education shall examine the accountability system for high schools created under the School-Based Management and Accountability Program. In particular, the State Board shall review, and make appropriate changes to, the growth composite for high schools so that the composite includes a growth standard that increases the weight currently given for a change in dropout rates, thus rewarding high schools for reducing dropout rates and improving graduation rates.

"(b) The State Board of Education, in cooperation with the State Board of Community Colleges, shall identify technical high schools and career centers currently in operation in the State and make recommendations to strengthen concurrent enrollment opportunities with the community colleges. The State Board shall report its findings to the Joint Legislative Education Oversight Committee by December 15, 2002.

"(c) The State Board of Education (Board) shall study the relationship between academic rigor and reducing the school dropout rate. As part of this study, the Board shall include the following:

"(1) The development of a proposal to accelerate the learning of students able to complete high school in three years;

"(2) The elimination of low-level classes at the middle and high school levels;

"(3) The examination of the appropriateness of electives and exploratory courses at the middle school level;

"(4) A review of current vocational courses to determine the rigor of the content; and

"(5) The development of up-to-date standards for vocational/technical teachers.

"The Board shall report its findings to the Joint Legislative Education Oversight Committee by January 15, 2003."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-103, s. 1, as amended by Session Laws 2002-159, s. 63, effective September 5, 2002, added subdivision (31).

Session Laws 2002-126, s. 7.15, effective July 1, 2002, in subsection (9a), substituted "on a regular basis" for "every five years" in the first sentence of the third paragraph.

Session Laws 2002-178, s. 1(a), effective October 31, 2002, added subdivision (27a).

Article 5.

Local Boards of Education.

§ 115C-36. Designation of board.

OPINIONS OF ATTORNEY GENERAL

School System Can Transfer Qualified Employees From Locally Funded Positions to State Funded Positions. — The power to assign teachers to either state or locally funded positions rests with local boards of education and, therefore, a school system could properly transfer qualified employees from locally funded positions to state funded positions in order to maximize its use of state funds. See opinion of Attorney General to Leslie Winner, Charlotte-Mecklenburg Board of Education, 1999 N.C. AG LEXIS 21 (5/26/99).

§ 115C-37. Election of board members.

Editor's Note. — Session Laws 2002-21 (Extra Session), s. 2, provides: "If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly."

§ 115C-42. Liability insurance and immunity.

OPINIONS OF ATTORNEY GENERAL

Local boards of education may enter into interlocal agreements to form the North Carolina School Boards Trust. See opinion of Attorney General to Edwin Dunlap, Jr., Executive Director, North Carolina School Boards Association, 2002 N.C. AG LEXIS 12 (2/20/02).

A Local Board of Education's Participation in the Self Retained Component Does Not Waive Immunity. — A local board of education's participation in the self retained component of the North Carolina School Boards Trust's risk management program does not constitute a waiver of governmental immunity under the statute, however, local boards waive their governmental immunity to the extent that the boards themselves are named insureds under any excess insurance policies that the trust has purchased. 2002 N.C. AG LEXIS 12 (2/20/02).

§ 115C-43. Defense of board of education members and employees.

OPINIONS OF ATTORNEY GENERAL

Local boards of education may enter into interlocal agreements to form the North Carolina School Boards Trust. See opinion of Attorney General to Edwin Dunlap, Jr., Executive Director, North Carolina School Boards Association, 2002 N.C. AG LEXIS 12 (2/20/02).

§ 115C-44. Suits and actions.

CASE NOTES

Presumptions and Burden of Proof. — When a teacher alleged her right to due process was violated in proceedings before a school board to terminate her employment because the school board and the school superintendent who made the recommendation to terminate her employment were represented by the same attorney, the school board's actions were presumed to be correct, under N.C. Gen. Stat. G.S. 115C-44(b). Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

§ 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.

(39) To Adopt Policies Related to Student Retention Decisions. — Local boards shall adopt policies related to G.S. 115C-45(c) that include opportunities for parents and guardians to discuss decisions to retain students.

(40) To adopt emergency response plans. — Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term "public record" is defined under G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

(41) To Encourage Recycling in Public Schools. — Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools.

(42) To Implement Guidelines to Support and Assist Students With Diabetes. — Local boards of education shall ensure that the guide-

lines adopted by the State Board of Education under G.S. 115C- 12(31) are implemented in schools in which students with diabetes are enrolled. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. Local boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans.

(43) Local boards of education are encouraged to adopt policies that require superintendents to assign to the core academic courses, in seventh through ninth grades, teachers who have at least four years' teaching experience and who have received within the last three years an overall rating on a formal evaluation that is at least above standard. (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; 2001-424, s. 28.17(c); 2001-500, s. 3; 2001-512, s. 12; 2002-103, s. 2; 2002-178, s. 3.)

Fairness in Testing Program. — Session Laws 2001-424, s. 28.17(i), as amended by Session Laws 2002-126, s. 7.17(f), provides: "The Joint Legislative Education Oversight Committee shall study the State's testing program. As part of this study, the Committee shall consider:

"(1) The number of tests currently mandated at the State level and the process and cost of developing, validating, and scoring them.

"(2) Whether the State should consider the use of nationally developed tests as a substitute to State-developed testing. In particular, the Committee shall determine whether this use would (i) affect the ABCs Program, (ii) adequately measure student achievement and performance, (iii) provide more than minimum levels of achievement, (iv) provide a better comparison to student achievement and performance in other states, (v) be practical for high school courses or higher level courses, (vi) reduce the need for field testing, and (vii) offer any cost savings to the State.

"(3) The number of grades in which State tests are given. The Committee shall determine the necessity for testing all grades in third through eighth grades, whether a reduction in the grades tested would affect the receipt of federal money, and the extent to which a reduction would impair the State's ability to identify schools under the ABCs Program.

"(4) The high school courses for which State tests are given and whether there is an appropriate distribution of tests across grades nine through 12 and that test an appropriate array of the minimum courses required for admission to the constituent institutions of The University of North Carolina. In addition, the Committee shall examine whether students who take higher level courses and students in 12th grade are held accountable for their academic growth and performance.

"(5) The advantages and disadvantages of using a composite of end-of-course tests or other tests such as the SAT, AP tests, or other nationally standardized tests in high school rather than developing a high school exit exam. If the Committee finds a high school exit exam is preferable, then it shall determine whether it must be administered to all students or limited to certain students, for example, those who do not take the SAT or a certain number of courses for which there are end-of-course tests.

"(6) The extent to which additional testing, including field testing, practice testing, and

locally mandated testing, is occurring and whether this should be limited or prohibited.

"(7) Evaluate alternative schools to determine how educational achievement is being advanced in these alternative school programs and that placement in these programs is to improve student performance rather than improve the performance of the school in which the student originally was assigned.

"(7a) The extent to which the State tests assist in compliance with the assessment and accountablility provisions of the 'No Child Left Behind' law and regulations, the ABCs program model, and the Leandro rulings.

"(8) Any other issue the Committee considers relevant.

"The Committee shall report its findings and any recommendations, including recommended legislation, to the 2003 General Assembly."

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 2002-103, s. 2, and Session Laws 2002-178, s. 3, each added a subdivision (42) to this section. The subdivision (42) as added by Session Laws 2002-178, s. 3, has been renumbered as subdivision (43) at the direction of the Revisor of Statutes.

Session Laws 2002-103, s. 3, provides that the State Board of Education shall report no later than September 1, 2003, to the Joint Legislative Education Oversight Committee on the Board's progress regarding the adoption, dissemination, and implementation of the guidelines under Sections 1 and 2 of the act.

Session Laws 2002-103, s. 4, provides, in part, that the guidelines under Section 1 of the act shall be adopted no later than January 15, 2003, and shall be implemented under Section 2 of the act beginning with the 2003-2004 school year.

Session Laws 2002-178, s. 6, provides: "The Joint Legislative Education Oversight Committee shall study the fiscal and instructional accountability of local school administrative units. As part of this study, the Committee shall:

"(1) Evaluate the fiscal management and instructional leadership provided by local school administrative units.

"(2) Analyze whether local school administrative units are utilizing their funding and resources in a proper, strategic manner with regard to their at-risk children.

"(3) Evaluate State fiscal controls that are available to ensure that local allocation of funding and resources is cost-effective and is appropriately focused on enhancing educational leadership, teaching the standard course of study, and improving student learning.

"(4) Analyze State and local procedures for identifying superintendents, principals, and teachers who need additional training or assistance in order to implement a strategic and cost-effective instructional program that meets the needs of all children, including at-risk children, so that they obtain a sound basic education by achieving grade level, or above, academic performance.

"(5) Identify current and possible actions that the State may implement in order to correct ineffective instructional leadership or teaching in a school or school system. In particular, the Committee shall ensure that fair and efficient procedures are available to the State for removing ineffective superintendents, principals, or teachers and for replacing them with effective, competent ones. The Committee shall report its findings and any recommendations to the 2003 General Assembly."

Session Laws 2002-180, s. 8.2, provides that the Joint Legislative Education Oversight Committee may study issues regarding the recruitment and retention of teaching personnel in the public schools. If it undertakes this study, the Committee shall recommend ways to remove barriers and improve the ability of Local Education Agencies to recruit quality teachers, retain teachers currently employed by the LEAs, and attract second career teachers to positions in the public schools. Issues that may be addressed in this study include enhancing or weighting the current salary schedule to increase the salary for first year teachers; granting licensure reciprocity to teachers who have been tested and licensed in other states; developing alternative licensure opportunities to attract second career teachers; providing tuition support for alternative licensure candidates; providing training for alternative licensure candidates through the community college system; processing initial licensure requests at the local level; expanding teacher-training programs in the State in order to produce more teachers; strategies for expanding the pool of qualified teachers; and using recruitment and retention incentives to attract and retain high-quality teachers, especially in low-performing schools and in fields of certification in which there are shortages of teachers.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the

Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-103, s. 2, effective September 5, 2002, added subdivision (42).

Session Laws 2002-178, s. 3, effective October 31, 2002, added the subdivision designated herein as subdivision (43).

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.

ARTICLE 7.

Organization of Schools.

§ 115C-66. Administrative units classified.

Editor's Note. — Session Laws 2002-178, s. 6, provides: "The Joint Legislative Education Oversight Committee shall study the fiscal and instructional accountability of local school administrative units. As part of this study, the Committee shall:

"(1) Evaluate the fiscal management and instructional leadership provided by local school administrative units.

"(2) Analyze whether local school administrative units are utilizing their funding and resources in a proper, strategic manner with regard to their at-risk children.

"(3) Evaluate State fiscal controls that are available to ensure that local allocation of funding and resources is cost-effective and is appropriately focused on enhancing educational leadership, teaching the standard course of study, and improving student learning.

"(4) Analyze State and local procedures for identifying superintendents, principals, and teachers who need additional training or assistance in order to implement a strategic and cost-effective instructional program that meets the needs of all children, including at-risk children, so that they obtain a sound basic education by achieving grade level, or above, academic performance.

"(5) Identify current and possible actions that the State may implement in order to correct ineffective instructional leadership or teaching in a school or school system. In particular, the Committee shall ensure that fair and efficient procedures are available to the State for removing ineffective superintendents, principals, or teachers and for replacing them with effective, competent ones. The Committee shall report its findings and any recommendations to the 2003 General Assembly."

SUBCHAPTER IV. EDUCATION PROGRAM.

ARTICLE 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

Editor's Note. —

Session Laws 2002-126, s. 5.1(f), provides: "Limitations on Preventive Health Services Block Grant Funds. — Twenty-five percent (25%) of funds allocated for Rape Prevention and Rape Education shall be allocated as grants to nonprofit organizations to provide rape prevention and education programs targeted for middle, junior high, and high school students.

"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 2002-2003 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and

shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

"The Department of Health and Human Services shall contract for the follow-up testing involved with the Newborn Screening Program. The Department may contract for these services with an entity within or outside of the State; however, the Department may only contract with an out-of-state entity if it can be demonstrated that there is a cost-savings associated with contracting with the out-of-state entity. The contract amount shall not exceed twenty-five thousand dollars ($25,000). The amount of the contract shall be covered by funds in the Maternal and Child Health Block Grant."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 115C-81.2. Comprehensive plan for reading achievement.

Editor's Note. —

Session Laws 2002-178, s. 5(a) and (b), provides: "(a) The State Board of Education shall adopt a policy that requires kindergarten through eighth grade teachers to take three renewal credits in reading methods courses during each five-year license renewal cycle.

"(b) The University of North Carolina Board of Governors shall study whether to require at least two reading methods courses for all elementary education majors and at least one reading methods course for all middle grades education majors in teacher education programs. The study also shall examine appropriate reading-teaching pedagogy and reading-teaching methods to be required in these courses in light of G.S. 115C-81.2 and the requirements of the federal Reading First Program under Part B of Title I of P.L. 107-110. The study also shall document the course changes and personnel changes made to implement G.S. 115C-81.2. As part of the study, the Board shall review the reading methods course requirements by majors in the teacher education programs at Appalachian State and East Carolina University. The Board shall report its findings to the Joint Legislative Education Oversight Committee by December 15, 2002."

Part 3B. Technology Alliance.

§ 115C-102.15. Business and Education Technology Alliance.

(a) There is created the State Board of Education's Business and Education Technology Alliance.

(b) The Business and Education Technology Alliance shall be composed of 27 members who have knowledge and interest in ensuring that the effective use of technology is built into the North Carolina School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century. These members shall be appointed as follows:

(1) The Superintendent of Public Instruction or his or her designee;

(2) One member of the State Board of Education appointed by the chair of the State Board of Education;

(3) One parent of a public school child appointed by the State Board of Education after receiving recommendations from the North Carolina State Parent Teacher Association;

(4) Two members of the Senate appointed by the President Pro Tempore of the Senate;

(5) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(6) One member of a local board of education who represents a local education agency (LEA) that has successfully incorporated technology into its schools, who is appointed by the Governor, after receiving recommendations from the North Carolina School Boards Association;

(7) One member of a local board of education who represents a local education agency (LEA) that has limited access to technology, who is appointed by the Governor, after receiving recommendations from the North Carolina School Boards Association;

(8) Two at-large members appointed by the Governor;

(9) One representative of business and industry appointed by the State Board of Education after receiving recommendations from the North Carolina Citizens for Business and Industry;

(10) Four members appointed by the President Pro Tempore of the Senate. In making these appointments the President Pro Tempore is encouraged to consider appointing a local school superintendent or a local school administrator who represents a local education agency that has limited access to technology, a school principal who works in a school that successfully incorporates technology into its instructional program, a school teacher who works in a school with limited access to technology, and a technology director who represents a local education agency (LEA) that has successfully incorporated technology into its schools. Professional associations representing school administrators and professional associations representing teachers may recommend appointees to the President Pro Tempore;

(11) Four members appointed by the Speaker of the House of Representatives. In making these appointments the Speaker of the House of Representatives is encouraged to consider appointing a local school superintendent or a local school administrator from a local education agency that has successfully incorporated the use of technology into its instructional programs, a school principal working in a school with limited access to technology, a school teacher who has successfully incorporated the use of technology into classroom instruction, and a technology director who represents a local education agency (LEA) that has limited access to technology. Professional associations representing school administrators and professional associations representing teachers may recommend appointees to the Speaker of the House of Representatives;

(12) One chancellor or his or her designee of institutions of higher education who has demonstrated effective and innovative use of technology for education, appointed by the Board of Governors of The University of North Carolina;

(13) One president or his or her designee of the Community College System who has demonstrated effective and innovative use of technology for education, appointed by the State Board of Community Colleges;

(14) Two county commissioners, one of whom represents a county that has successfully incorporated technology into its schools and community, who are appointed by the State Board of Education, after receiving recommendations from the North Carolina Association of County Commissioners;

(15) Two representatives of technology businesses who have either successfully developed innovative technology programs for education or have partnered with a local education agency (LEA) to develop a technology-based education environment in that LEA, who are appointed by the State Board of Education, after receiving recommendations from North Carolina Electronics and Information Technolo-

gies Association and the North Carolina Citizens for Business and Industry; and

(16) One representative of the Information Resource Management Commission appointed by the Commission's Chair.

(c) Each of the following organizations or agencies shall select a representative from its organization or agency to serve as a nonvoting member to the Alliance. These members shall provide information to the Alliance about technology in North Carolina: Rural Internet Access Authority; Information and Technology Services, North Carolina Department of Public Instruction; Office of State Information Technology Services, Office of the Governor.

(d) Members of the Business and Education Technology Alliance shall serve for two-year terms. All members of the Alliance shall be voting members unless they are designated as ex officio members. The officer who made the initial appointment shall fill vacancies in the appointed membership. The member of the State Board of Education appointed to the Alliance by the chair of the State Board of Education shall serve as chair of the Alliance.

(e) Members of the Business and Education Technology Alliance shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6.

(f) The Business and Education Technology Alliance shall:

(1) Advise the State Board of Education on the development of a vision for a technologically literate citizen in 2025. This vision should contain the educational standards needed to accomplish that vision, the educational uses of technology to accomplish that vision, and a plan for educating the community, educators, and business people about the vision and educational uses of technology. The vision and the plan for educating the public about the vision may include:

a. Various models and frameworks of the high quality and effective use of technology for education purposes including those students who have not learned with traditional approaches. The models may include the Cumberland County Schools Web Academy, the Virtual High School, and Nova Net.

b. Opportunities for teachers to experience the uses of technology in work and business settings, which is the world for which they are preparing students to work.

c. Production of multimedia presentations such as videos, commercials, and publications that help citizens, students, and educators see and understand the current and future power of technology for educating our children and impacting our lives.

(2) Advise the State Board of Education on the development of a technology infrastructure, delivery, and support system that provides equity and access to all segments of the population in North Carolina. The infrastructure, delivery, and support system may include:

a. Opportunities for access to high-speed connectivity to the Internet which impacts on the quality of instruction that can be provided for students at school and in the community.

b. Technology networks that enable communities to encompass the student and his/her family while maintaining the rights to privacy for all citizens, i.e., a social service, health, education, and mental health network. This network will increase collaboration among agencies and provide a coordinated, systemic service approach.

c. Continue to evaluate the status of current technology systems and structures from the State to local level as it relates to employing technology for improving instruction.

d. Continue to provide access to technology equipment and infrastructure at home, school, and in the community such as ex-

tended hours of operation for schools and other community facilities and on-loan laptop computers for student and parent use.

e. Continue to develop surveys that provide information about the types and results of technological tools utilized by teachers, students, and others at school, in the community, and home.

f. Sufficient personnel to maintain the operation of information technology systems.

g. Coordination with regional economic development planners to position local education agencies as an integral part of economic development.

(3) Advise the State Board of Education on the development of professional development programs for teachers to successfully implement and use technology in public schools for all students. These programs should also develop their leadership skills so that they can use technology as a tool to support the rethinking of the core business of schools: student learning.

The professional development programs may include:

a. Models of staff development from the State that are considered state of the art, support the vision for technology, and that could be used by local districts to train their staffs.

b. Designated time for professional development for using technology as well as skills for using technology as a delivery for curriculum and instructional programs.Designated time for professional development for using technology as well as skills for using technology as a delivery for curriculum and instructional programs.

c. Collegial planning time so that colleagues can coach and support each other in learning new ways in which to think about instruction.

d. Teacher and administrator preparation and other programs that ensure the Department of Public Instruction's Technology Foundation Standards for Teachers and Administrators in higher education are incorporated into classroom instruction.

e. Training teachers with skill sets to teach technical courses that are in growing demand to function at home and work.

f. Increase opportunities for sharing best practices in all areas of instruction.

g. Increase opportunities for learning how to use technology to customize instruction for all students.

h. Increase opportunities for learning how to use technology to diagnose student learning.

(4) Advise the State Board of Education on the development of a Funding and Accountability system to ensure statewide access and equity. The Funding and Accountability system may include:

a. Public-private partnerships.

b. Identification of resources and the cost of those resources.

c. Funding to keep hardware/software current.

d. Evaluating progress toward realizing the technology vision.

e. Evaluating the impact of various technology initiatives on alleviating some of the State's education and economic development problems.

f. Incentives to encourage risk taking and innovative uses of technology.

g. Funding for only those initiatives that are well-planned, demonstrate high commitment, and have a solid evaluation component.

(5) Report annually to the State Board of Education on the progress of the Alliance's recommendations for education technology in the public

schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve implementing education technology in the public schools.

(6) Report annually to the Joint Legislative Education Oversight Committee in the General Assembly on the recommendations for education technology in the public schools on the first Friday in January. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve implementing education technology in the public schools. (2002-126, s. 7.27(a)-(f).)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 7.27(g) provides: "Federal funds and private funds may be used to support the Alliance. State funds shall not be used to support the Alliance."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 8B.

School-Based Management and Accountability Program.

Part 3. School-Based Accountability.

§ 115C-105.37A. Continually low-performing schools; definition; assistance and intervention; reassignment of students.

Evaluation of Initiatives to Assist High-Priority Schools. — Session Laws 2001-424, ss. 29.6(a) to (d), as amended by Session Laws 2002-126, s. 7.28, provide:

"(a) In order for the high-priority schools identified in Section 29.1 of this act [s. 29.1 of Session Laws 2001-424, which provided for immediate assistance to the highest priority elementary schools] to remain eligible for the additional resources provided in this section [s. 29.6 of Session Laws 2001-424], the schools must meet the expected growth for each year and must achieve high growth for at least two out of three years based on the State Board of Education's annual performance standards set for each school. No adjustment in the allotment of resources based on performance shall be made until the 2004-2005 school year.

"(b) All teaching positions allotted for students in high-priority schools and continually low-performing schools in those grades targeted for smaller class sizes shall be assigned to and teach in those grades and in those schools. In grades K-3 in high-priority schools, the maximum class size for the portion of the 2001-2002 school year beginning with January 1, 2002, shall be no more than two students above the allotment ratio in that grade. The maximum class size for subsequent school years in grades K-3 in high priority schools and in grades K-5 in continually low-performing schools shall be no more than one student above the allotment ratio in that grade. The Department of Public Instruction shall monitor class sizes at these schools at the end of the first month of school and report to the State Board of Education on the actual class sizes in these schools. If the local school administrative unit notifies the State Board of Education that they do not have sufficient resources to adhere to the class size maximum requirements, the State Board shall verify the accuracy of the request. If additional resources are determined necessary, the State Board of Education may allocate additional teaching positions to the unit from the Reserve for Average Daily Membership Adjustments.

"(c) If a local board of education determines that the local school administrative unit is unable to implement the class-size limitation in accordance with this section [s. 29.6 of Session

Laws 2002-424] for any high-priority school located in the unit, the local board may request a waiver for the school for the 2001-2002 school year. The request shall include the documentation required in G.S. 115C-105.26(a). If the State Board grants the waiver, the State Board shall withdraw the additional teacher positions allotted to the local school administrative unit for the school and reinstate the regular allotment for teacher assistants for the school.

"If a local board of education determines that the local school administrative unit is unable to implement the class-size limitation and other high priority initiatives in accordance with this section for any high-priority school located in the unit for the 2002-2003 school year, the local board may request a waiver for the school from the State Superintendent of Public instruction for the 2002-2003 school year. The Superintendent shall evaluate the school's efforts to meet the goals of high priority schools. The Superintendent may grant a waiver for the2002-2003 school year if the Superintendent finds that the school is making efforts comparable to those required for high-priority schools and that the educational progress of students in the school is satisfactory.

"(d) Of funds appropriated from the General Fund to State Aid to Local School Administrative Units, the sum of five hundred thousand dollars ($500,000) for fiscal year 2001-2002 and the sum of five hundred thousand dollars ($500,000) for fiscal year 2002-2003 shall be used by the State Board of Education to contract with an outside organization to evaluate the initiatives set forth in this act.

"The evaluation shall include:

"(1) An assessment of the overall impact these initiatives have had on student achievement;

"(2) An assessment of the effectiveness of each individual initiative set forth in this act [Session Laws 2001-424] in improving student achievement;

"(3) An identification of changes in staffing patterns, instructional methods, staff development, and parental involvement as a result of these initiatives;

"(4) An accounting of how funds and personnel resources made available for these schools were utilized and the impact of varying patterns of utilization on changes in student achievement;

"(5) An assessment of the impact of bonuses for mathematics, science, and special education teachers on (i) the retention of these teachers in the targeted schools, (ii) the recruitment of teachers in these specialties into targeted schools, (iii) the recruitment of teachers certified in these disciplines into teaching, (iv) student achievement in schools at which these teachers receive these bonuses; and

"(6) Recommendations for the continuance and improvement of these initiatives.

"The State Board of Education shall make an initial report to the Joint Legislative Education Oversight Committee regarding the results of this evaluation by December 1, 2002, and annually thereafter. The State Board of Education shall submit its recommendations for changes to these initiatives to the Committee at any time."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 115C-105.38. Assistance teams; review by State Board.

(a) The State Board of Education may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-performing schools in which the educational performance of the students is declining. The Department of Public Instruction shall, with the approval of the State Board, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

(1) Review and investigate all facets of school operations and assist in developing recommendations for improving student performance at that school.

(2) Evaluate at least semiannually the personnel assigned to the school and make findings and recommendations concerning their performance.

(3) Collaborate with school staff, central offices, and local boards of education in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.

(4) Make recommendations as the school develops and implements this plan.

(5) Review the school's progress.

(6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.27 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.

(b1) Report to the State Board of Education if a school and its local board of education are not responsive to the team's recommendations. A copy of that report shall be made available to the local board, and the local board shall have an opportunity to respond. Notwithstanding G.S. 115C-36 and other provisions of this Chapter, if the State Board confirms that the school and local board have failed to take appropriate steps to improve student performance at that school, the State Board shall assume all powers and duties previously conferred upon that local board and that school and shall have general control and supervision of all matters pertaining to that school until student performance at the school meets or exceeds the standards set for the school. The State Board may, as it considers appropriate, delegate any powers and duties to that local board or school before the school meets or exceeds those standards.

(c) If a school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continues or that the State Board take further action under G.S. 115C-105.39.

(d) The State Board shall annually review the progress made in identified low-performing schools. (1995 (Reg. Sess., 1996), c. 716, s. 3; 2002-178, s. 7.)

Effect of Amendments. — Session Laws 2002-178, s. 7, effective October 31, 2002, added subsection (b1).

§ 115C-105.41. Students who have been placed at risk of academic failure; personal education plans.

Fairness in Testing Program. — Session Laws 2002-424, s. 28.17(i), as amended by Session Laws 2002-126, s. 7.17(f), provides: "The Joint Legislative Education Oversight Committee shall study the State's testing program. As part of this study, the Committee shall consider:

"(1) The number of tests currently mandated at the State level and the process and cost of developing, validating, and scoring them.

"(2) Whether the State should consider the use of nationally developed tests as a substitute to State-developed testing. In particular, the Committee shall determine whether this use would (i) affect the ABCs Program, (ii) adequately measure student achievement and performance, (iii) provide more than minimum levels of achievement, (vi) provide a better comparison to student achievement and performance in other states, (v) be practical for high school courses or higher level courses, (vi) reduce the need for field testing, and (vii) offer any cost savings to the State.

"(3) The number of grades in which State tests are given. The Committee shall determine the necessity for testing all grades in third through eighth grades, whether a reduction in the grades tested would affect the receipt of federal money, and the extent to which a reduction would impair the State's ability to identify

schools under the ABCs Program.

"(4) The high school courses for which State tests are given and whether there is an appropriate distribution of tests across grades nine through 12 and that test an appropriate array of the minimum courses required for admission to the constituent institutions of The University of North Carolina. In addition, the Committee shall examine whether students who take higher level courses and students in 12th grade are held accountable for their academic growth and performance.

"(5) The advantages and disadvantages of using a composite of end-of-course tests or other tests such as the SAT, AP tests, or other nationally standardized tests in high school rather than developing a high school exit exam. If the Committee finds a high school exit exam is preferable, then it shall determine whether it must be administered to all students or limited to certain students, for example, those who do not take the SAT or a certain number of courses for which there are end-of-course tests.

"(6) The extent to which additional testing, including field testing, practice testing, and locally mandated testing, is occurring and whether this should be limited or prohibited.

"(7) Evaluate alternative schools to determine how educational achievement is being advanced in these alternative school programs and that placement in these programs is to improve student performance rather than improve the performance of the school in which the student originally was assigned.

"(7a) The extent to which the State tests assist in compliance with the assessment and accountability provisions of the 'No Child Left Behind' law and regulations, the ABCs program model, and the Leandro rulings.

"(8) Any other issue the Committee considers relevant.

"The Committee shall report its findings and any recommendations, including recommended legislation, to the 2003 General Assembly."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

CASE NOTES

Applied in CM ex rel. JM v. Board of Pub. Educ., 184 F. Supp. 2d 466, 2002 U.S. Dist. LEXIS 1786 (W.D.N.C. 2002).

§ 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 avail-

able 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

G.S. 115C-110(n) has a delayed effective date. See note.

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.

(n) **(Effective July 1, 2003)** Each interpreter or transliterator employed by a local educational agency, to provide services to hearing-impaired students, must annually complete 15 hours of job-related training that has been approved by the local educational agency. (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); 2002-182, s. 6.)

Effect of Amendments. —
Session Laws 2002-182, s. 6, effective July 1, 2003, added subsection (n).

Part 3. Appeals.

§ 115C-116. Notice of decisions; mediation, administrative review, and judicial review of disagreements.

CASE NOTES

Cited in CM ex rel. JM v. Board of Pub. Educ., 184 F. Supp. 2d 466, 2002 U.S. Dist. LEXIS 1786 (W.D.N.C. 2002).

Part 10. State and Local Relationships.

§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.

(a) **(Effective until July 1, 2003)** Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal law, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar facility.

(a) **(Effective July 1, 2003)** Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal law, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State

G.S. 115C-140.1(a) is set out twice. See notes.

and federal funding required to educate that child in the local school administrative unit for the fiscal year. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar facility.

(b) The State Board of Education shall use State and federal funds appropriated for children with special needs to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. (1981, c. 859, s. 29.7; 2002-164, s. 2.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2003. The second version of subsection (a) set out above is effective July 1, 2003.

Editor's Note. — Session Laws 2002-164, s. 3, provides: "The State Board of Education shall provide for a local school administrative unit to request funds from the Group Homes Program for Children with Disabilities if a child assigned to that unit was not in that unit's April headcount for exceptional children for the previous school year,even if the local school administrative unit received Group homes Program funds for that child for a portion of the preceding school year."

Effect of Amendments. — Session Laws 2002-164, s. 2, effective July 1, 2003, inserted the second sentence in subsection (a).

Article 10A.

Testing.

Part 2. Statewide Testing Program.

§ 115C-174.11. Components of the testing program.

Editor's Note. —

Session Laws 2002-126, s. 7.44, as amended by Session Laws 2002-159, s. 70.5(a), provides: "Notwithstanding G.S. 115C-174.11(a), the Department of Public Instruction may administer a standardized reading test measure for a pilot study of the comparative predictive validity of the reading assessment used in kindergarten through second grade. This standardized measure may be administered to students in eligible public schools, including charter schools, and is limited to the extent necessary to receive funds as part of the federal Reading First Grant. The results of this standardized measure shall not be used to evaluate, promote, or retain any student."

Session Laws 2002-159, s. 70.5(b), provides: "This section applies only to the extent that and at such times as it is necessary to receive and retain funds as part of the federal Reading First Grant. This section expires at the time that the federal Reading First Grant expires. In the event that the State is not awarded funds as a part of the federal Reading First Grant, the Department shall not continue to implement Section 7.44 of S.L. 2002-126, as rewritten by this section."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 115C-174.12. Responsibilities of agencies.

(a) The State Board of Education shall establish policies and guidelines

necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article.

(b1) The Superintendent shall notify local boards of education by October 1 of each year of any field tests that will be administered in their schools during the school year, the schools at which the field tests will be administered, and the specific field tests that will be administered at each school.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual and competency testing programs to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student needs further. (1977, c. 522, ss. 4-6; c. 541, ss. 2, 5-7; 1981, c. 423, ss. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1995, c. 524, s. 4; 2001-424, s. 28.17(f); 2002-126, s. 7.30; 2002-159, s. 70.)

Fairness in Testing Program. — Session Laws 2001-424, s. 28.17(i), as amended by Session Laws 2002-126, s. 7.17(f), provides: "The Joint Legislative Education Oversight Committee shall study the State's testing program. As part of this study, the Committee shall consider:

"(1) The number of tests currently mandated at the State level and the process and cost of developing, validating, and scoring them.

"(2) Whether the State should consider the use of nationally developed tests as a substitute to State-developed testing. In particular, the Committee shall determine whether this use would (i) affect the ABCs Program, (ii) adequately measure student achievement and performance, (iii) provide more than minimum levels of achievement, (vi) provide a better comparison to student achievement and performance in other states, (v) be practical for high school courses or higher level courses, (vi) reduce the need for field testing, and (vii) offer any cost savings to the State.

"(3) The number of grades in which State tests are given. The Committee shall determine the necessity for testing all grades in third through eighth grades, whether a reduction in the grades tested would affect the receipt of federal money, and the extent to which a reduction would impair the State's ability to identify schools under the ABCs Program.

"(4) The high school courses for which State tests are given and whether there is an appropriate distribution of tests across grades nine through 12 and that test an appropriate array of the minimum courses required for admission to the constituent institutions of The University of North Carolina. In addition, the Committee shall examine whether students who take higher level courses and students in 12th grade are held accountable for their academic growth and performance.

"(5) The advantages and disadvantages of using a composite of end-of-course tests or other tests such as the SAT, AP tests, or other nationally standardized tests in high school rather than developing a high school exit exam. If the Committee finds a high school exit exam is preferable, then it shall determine whether it must be administered to all students or limited

to certain students, for example, those who do not take the SAT or a certain number of courses for which there are end-of-course tests.

"(6) The extent to which additional testing, including field testing, practice testing, and locally mandated testing, is occurring and whether this should be limited or prohibited.

"(7) Evaluate alternative schools to determine how educational achievement is being advanced in these alternative school programs and that placement in these programs is to improve student performance rather than improve the performance of the school in which the student originally was assigned.

"(7a) The extent to which the State tests assist in compliance with the assessment and accountability provisions of the 'No Child Left Behind' law and regulations, the ABCs program model, and the Leandro rulings.

"(8) Any other issue the Committee considers relevant.

"The Committee shall report its findings and any recommendations, including recommended legislation, to the 2003 General Assembly."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 7.30, as amended by Session Laws 2002-159, s. 70, effective January 1, 2003, in subsection (a), added "for minimizing the frequency of field testing at any one school" in the first sentence, and added the second and third sentences; and added subsection (b1).

ARTICLE 16.

Optional Programs.

Part 6A. Charter Schools.

§ 115C-238.29A. Purpose.

Editor's Note. —

Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

§ 115C-238.29E. Charter school operation.

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Legislative Intent. — The General Assembly clearly intended for charter schools to be treated as public schools subject to the uniform budget format. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

§ 115C-238.29H. State and local funds for a charter school.

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Meaning of "Local Current Expense Appropriation.". — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

Article 17.

Supporting Services.

Part 1. Transportation.

§ 115C-249. Purchase and maintenance of school buses, materials and supplies.

Editor's Note. — Session Laws 2002-126, s. 7.14(a), provides: "Of the funds appropriated to the State Board of Education for the 2002-2003 fiscal year, the Board may use up to ten million dollars ($10,000,000) for allotments to local boards of education for replacement school buses under G.S. 115C-249(c) and (d). In making these allotments, the State Board of Education may impose any of the following conditions:

"(1) The local board of education must use the funds only to make the first year's payment on a financing contract entered into pursuant to G.S. 115C-528.

"(2) The term of a financing contract entered into under this section shall not exceed three years.

"(3) The local board of education must purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.

"(4) The State Board of Education shall solicit bids for the direct purchase of buses and for the purchasing of buses through financing. The State Board of Education may solicit separate bids for financing if the Board determines that multiple financing options are more cost-efficient.

"(5) A bus financed pursuant to this section must meet all federal motor vehicle safety regulations for school buses.

"(6) Any other condition the State Board of Education considers appropriate."

Session Laws 2002-126, s. 7.14(b), provides: "It is the intent of the General Assembly to continue its annual appropriations to the State Board of Education for replacement school buses."

Session Laws 2002-126, s. 7.14(c), provides: "Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

SUBCHAPTER V. PERSONNEL.

§ 115C-273. Salary schedule for superintendents.

Editor's Note. — Session Laws 2002-126, s. 28.3A, as amended by Session Laws 2002-159, s. 82, provides: "Any person who is a full-time permanent employee on September 30, 2002, of (i) a local board of education, or (ii) the State, who is eligible for annual leave shall have a one-time additional 10 days of annual leave credited on that date. Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of this act are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. Employees paid under Section 7.45 of this act shall not be eligible for this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that maybe carried forward. Part-time permanent employees and 9- or 10-month employees shall receive a pro rata amount of the 10 days.

"The General Assembly encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees. Included within this may be salary increases within available funds to employees not receiving special annual leave bonuses."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

ARTICLE 19.

Principals and Supervisors.

§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.

CASE NOTES

Cited in Love-Lane v. Martin, 201 F. Supp. 2d 566, 2002 U.S. Dist. LEXIS 17219 (M.D.N.C. 2002).

§ 115C-288. Powers and duties of principal.

Fairness in Testing Program. — Session Laws 2001-424, s. 28.17(i), as amended by Session Laws 2002-126, s. 7.17(f), provides: "The Joint Legislative Education Oversight Committee shall study the State's testing program. As part of this study, the Committee shall consider:

"(1) The number of tests currently mandated at the State level and the process and cost of developing, validating, and scoring them.

"(2) Whether the State should consider the use of nationally developed tests as a substitute to State-developed testing. In particular, the Committee shall determine whether this use would (i) affect the ABCs Program, (ii) adequately measure student achievement and performance, (iii) provide more than minimum levels of achievement, (iv) provide a better comparison to student achievement and performance in other states, (v) be practical for high school courses or higher level courses, (vi) reduce the need for field testing, and (vii) offer any cost savings to the State.

"(3) The number of grades in which State tests are given. The Committee shall determine the necessity for testing all grades in third

through eighth grades, whether a reduction in the grades tested would affect the receipt of federal money, and the extent to which a reduction would impair the State's ability to identify schools under the ABCs Program.

"(4) The high school courses for which State tests are given and whether there is an appropriate distribution of tests across grades nine through 12 and that test an appropriate array of the minimum courses required for admission to the constituent institutions of The University of North Carolina. In addition, the Committee shall examine whether students who take higher level courses and students in 12th grade are held accountable for their academic growth and performance.

"(5) The advantages and disadvantages of using a composite of end-of-course tests or other tests such as the SAT, AP tests, or other nationally standardized tests in high school rather than developing a high school exit exam. If the Committee finds a high school exit exam is preferable, then it shall determine whether it must be administered to all students or limited to certain students, for example, those who do not take the SAT or a certain number of courses for which there are end-of-course tests.

"(6) The extent to which additional testing, including field testing, practice testing, and locally mandated testing, is occurring and whether this should be limited or prohibited.

"(7) Evaluate alternative schools to determine how educational achievement is being advanced in these alternative school programs and that placement in these programs is to improve student performance rather than improve the performance of the school in which the student originally was assigned.

"(7a) The extent to which the State tests assist in compliance with the assessment and accountablility provisions of the 'No Child Left Behind' law and regulations, the ABCs program model, and the Leandro rulings.

"(8) Any other issue the Committee considers relevant.

"The Committee shall report its findings and any recommendations, including recommended legislation, to the 2003 General Assembly."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

CASE NOTES

Principal Was Justified in Using Reasonable Force to Prevent Student from Leaving School Premises. — A student, in failing to heed the principal's warnings not to exit the building, engaged in and continued a difficulty with the principal that required the principal, under G.S. 115C-288(e), to undertake some reasonable force to protect defendant's safety and to prevent defendant from leaving the school premises. In re Pope, — N.C. App. —, 564 S.E.2d 610, 2002 N.C. App. LEXIS 682 (2002).

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 permit an applicant to fulfill this requirement before or during the applicant's second year of teaching provided the applicant

took the examination at least once during the first year of teaching. 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) 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, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

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); 2001-129, s. 1; 2002-126, s. 7.39.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 7.39, effective July 1, 2002, in the first paragraph of subsection (b), added "until the retirement of the teacher" at the end of the next-to-last sentence, and added the last sentence.

§ 115C-296.1. (Expires September 1, 2006) Teacher shortages; certification.

Editor's Note. — Session Laws 1998-226, s. 2, as amended by Session Laws 2002-126, s. 7.24, makes this section effective November 5, 1998, and provides for its expiration September 1, 2006, except that it remains effective for any teacher employed under this act before September 1, 2006.

§ 115C-302.1. Salary.

(a) Prompt Payment. — Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted teachers are paid.

(b) Salary Payments. — State-allotted teachers shall be paid for a term of 10 months. State-allotted months of employment for vocational education to local boards shall be used for the employment of teachers of vocational and technical education for a term of employment to be determined by the local boards of education. However, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter.

Each local board of education shall establish a set date on which monthly salary payments to State-allotted teachers shall be made. This set pay date may differ from the end of the month of service. The daily rate of pay for teachers shall equal one twenty-second of the monthly rate of pay.

Teachers may be prepaid on the monthly pay date for days not yet worked. A teacher who fails to attend scheduled workdays or who has not worked the number of days for which the teacher has been paid and who resigns, is dismissed, or whose contract is not renewed shall repay to the local board any salary payments received for days not yet worked. A teacher who has been prepaid and continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal under G.S. 115C-325 or other appropriate discipline.

Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first

day of the school year. The request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease the teacher's annual salary nor in any other way alter the contract made between the teacher and the local school administrative unit. Teachers employed for a period of less than 10 months shall not receive their salaries in 12 installments.

(c) Vacation. — Included within the 10-month term shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth of the annual rate for State employees for each month of employment. Local boards shall provide at least 10 days of annual vacation leave at a time when students are not scheduled to be in regular attendance. However, instructional personnel who do not require a substitute may use annual vacation leave on days that students are in attendance. Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual vacation leave days designated in the school calendar and may use those annual vacation leave days during the eleventh or twelfth month of employment.

On a day that pupils are not required to attend school due to inclement weather, but employees are required to report for a workday, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the teacher and the teacher's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, a teacher shall work on the scheduled makeup day.

All vacation leave taken by the teacher will be upon the authorization of the teacher's immediate supervisor and under policies established by the local board of education. Annual vacation leave shall not be used to extend the term of employment.

Notwithstanding any provisions of this subsection to the contrary, no person shall be entitled to pay for any vacation day not earned by that person.

(c1), (c2) Repealed by Session Laws 2002-126, s. 7.11(a), effective July 1, 2002, and applicable only to leave days accruing after September 30, 2002.

(c3) Teachers may accumulate annual vacation leave days without any applicable maximum until June 30 of each year. In order that only 30 days of annual vacation leave carry forward to July 1, on June 30 of each year any teacher or other personnel paid on the teacher salary schedule who has accumulated more than 30 days of annual vacation leave shall convert to sick leave the remaining excess accumulation.

Upon separation from service due to service retirement, resignation, dismissal, reduction in force, or death, an employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 30 days. In addition to the maximum of 30 days pay for accumulated annual leave, upon separation from service due to service retirement, any teacher or other personnel paid on the teacher salary schedule with more than 30 days of accumulated annual vacation leave may convert some or all of the excess accumulation to sick leave for creditable service towards retirement. Employees going onto term disability may exhaust annual leave rather than be paid in a lump sum.

(d) Personal Leave. — Teachers earn personal leave at the rate of .20 days for each full month of employment not to exceed two days per year. Personal leave may be accumulated to a maximum of five days. Personal leave may be used only upon the authorization of the teacher's immediate supervisor, but if the request is made at least five days in advance, the teacher cannot be required to provide a reason for the request. Unless approved by the principal, a teacher shall not take personal leave on the first day the teacher is required to report for the school year, on required teacher workdays, or on the day before or the day after holidays or scheduled vacation days. Teachers may transfer

personal leave days between local school administrative units. The local school administrative unit shall credit a teacher who has separated from service and is reemployed within 60 months from the date of separation with all personal leave accumulated at the time of separation. Local school administrative units shall not advance personal leave. Teachers using personal leave receive full salary less the required substitute deduction.

(e) Teachers in Year-Round Schools. — Compensation for teachers employed in year-round schools shall be the same as teachers paid for a 10-month term, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity for teachers who are employed at year-round schools shall be equivalent to those of other teachers employed for the same number of months, respectively. Teachers paid for a term of 10 months in year-round schools shall receive their salary in 12 equal installments.

(f) Overpayment. — Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.

(g) Service in Armed Forces. — The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(h) Teachers Paid From Other Funds. — Every local board of education may adopt, as to teachers not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system. If a local board of education does not adopt a local salary schedule, the State salary schedule shall apply. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

When a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason. A board of education may authorize the superintendent to supplement the salaries of all teachers from local funds, and the minutes of the board shall show what increase is allowed each teacher.

(i) Longevity Pay. — Longevity pay shall be based on the annual salary on the employee's anniversary date.

(j) Parental Leave. — A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. A teacher may also use up to 30 days of sick leave to care for a child placed with the teacher for adoption. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise. (1997-443, s. 8.38(e); 1999-237, s. 28.26(a), (b); 2002-126, s. 7.11(a); 2002-159, s. 37.5(a).)

Editor's Note. —

Session Laws 2002-126, s. 28.3A, as amended by Session Laws 2002-159, s. 82, provides: "Any person who is a full-time permanent employee on September 30, 2002, of (i) a local board of education, or (ii) the State, who is eligible for annual leave shall have a one-time additional 10 days of annual leave credited on that date. Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of this act are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. Employees paid under Section 7.45 of this act shall not be eligible for this additional annual

leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that maybe carried forward. Part-time permanent employees and 9- or 10-month employees shall receive a pro rata amount of the 10 days.

"The General Assembly encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees. Included within this may be salary increases within available funds to employees not receiving special annual leave bonuses."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 7.11(a), effective July 1, 2002, and applicable only to leave days accruing after September 30, 2002, deleted former subsections (c1) and (c2) regarding conversion of accumulated leave time, and inserted subsection (c3).

Session Laws 2002-159, s. 37.5(a), effective October 11, 2002, inserted the second sentence in subsection (j).

§ 115C-302.2. Job sharing by classroom teachers.

(a) The General Assembly finds that there is a shortage of qualified classroom teachers available in certain areas of certification, grade levels, and geographical areas of the State. The elimination of administrative and fiscal limitations on job-sharing arrangements would make teaching an attractive option for well-qualified classroom teachers who do not wish to work full time.

(b) A "classroom teacher in a job-sharing position" is a person who:

(1) Is employed by a local board of education as a public school teacher for fifty percent (50%) of the teacher workweek, as defined by that local board of education;

(2) Is paid on the teacher salary schedule;

(3) Spends at least seventy percent (70%) of his or her work time in classroom instruction; and

(4) Is sharing a teacher position with one other employee of that local board of education who meets the requirements of subdivisions (1) through (3) of this subsection.

The term does not include certified instructional support personnel or certified school services personnel such as guidance counselors, media coordinators, psychologists, social workers, audiologists, speech and language pathologists, and nurses.

(c) The State Board of Education shall adopt rules to facilitate job sharing by classroom teachers. These rules shall provide that a classroom teacher in a job-sharing position shall receive paid legal holidays, annual vacation leave, sick leave, and personal leave on a pro rata basis. Such a teacher shall also receive service credit under the Teachers' and State Employees' Retirement System as provided in G.S. 135-4(b) and insurance benefits as provided in Article 3 of Chapter 135 of the General Statutes. (2002-174, s. 1.)

Editor's Note. — Session Laws 2002-174, s. 7, made this section effective January 1, 2003.

Session Laws 2002-174, s. 5, provides: "The Legislative Research Commission shall study issues relating to employee benefits for public school employees, community college employees, and employees of State departments and institutions, in part-time and in job-sharing positions. In the course of the study the Commission shall consider whether the benefits currently offered are adequate to attract and retain qualified applicants in public school, community college, and State employment, the need to facilitate job sharing for public school employees other than teachers, the possibility of providing insurance and retirement benefits to employees working less than three-fourths time, the appropriate formula for computing retirement credit for part-time employees, and other issues related to employee benefits for employees in part-time and job-sharing positions. The Commission shall report on the results of this study to the 2003 General Assembly."

Session Laws 2002-174, s. 6, provides: "Nothing in this act [Session Laws 2002-174] shall be construed to require local school administrative units to place part-time employees in job-sharing positions or to hire employees in job-sharing positions."

Article 21.

Other Employees.

§ 115C-315. Hiring of school personnel.

(a) Janitors and Maids. — In the city administrative units, janitors and maids shall be appointed by the board of education of such local school administrative unit upon the recommendation of the superintendent.

(b) Election by Local Boards. — School personnel shall be elected by the local board of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

It is the policy of the State of North Carolina to encourage and provide for the most efficient and cost-effective method of meeting the needs of local school administrative units for noncertified support personnel. To this end, the State Board of Education shall recommend to the General Assembly by November 1, 1984, a system using factors and formulas to determine the total number of noncertified support personnel allotted to local school administrative units. The recommended system for allotting noncertified support personnel shall include the proposed State's funding obligation for these positions and shall be developed in consultation with school-based support personnel or their representatives.

(c) Prerequisites for Employment. — All professional personnel employed in the public schools of the State or in schools receiving public funds shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.

(d) Certification for Professional Positions. — The State Board of Education shall have entire control of certifying all applicants for professional 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 certificate or graduate certificate to demonstrate his or her academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

(d1) Certification for School Nurses. — Notwithstanding any other provision of law or rule, school nurses employed in the public schools prior to July 1, 1998, shall not be required to be nationally certified to continue employment. School nurses not certified by the American Nurses' Association or the National Association of School Nurses shall continue to be paid based on the noncertified nurse salary range as established by the State Board of Education.

(e) Repealed by Session Laws 1989, c. 385, s. 3.

(f) Employing Persons Not Holding Nor Qualified to Hold Certificate. — It shall be unlawful for any board of education to employ or keep in service any

professional person who neither holds nor is qualified to hold a certificate in compliance with the provisions of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372, art. 5, s. 4; art. 18, ss. 1-4; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 9; 1985 (Reg. Sess., 1986), c. 975, s. 16; 1989, c. 385, s. 3; 2002-126, s. 7.41(a).)

Editor's Note. — Session Laws 2002-126, s. 7.41(b), provides: "The Joint Legislative Education Oversight Committee shall study issues related to the qualifications of school nurses. In the course of the study, the Committee shall consider the current State Board of Education rule requiring national certification of school nurses, the availability of school nurses across the State, and the need for additional local flexibility regarding the credentials of school nurses. The Committee shall report the results of its study to the 2003 General Assembly.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 7.41(a), effective July 1, 2002, added subsection (d1).

§ 115C-316. Salary and vacation.

(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

(1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. — Each local board of education shall establish a set date on which monthly salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis, shall be made. This set pay date may differ from the end of the calendar month of service. Employees may be prepaid on the monthly pay date for days not yet worked. An employee who fails to attend scheduled workdays or who has not worked the number of days for which the employee has been paid and who resigns or is dismissed shall repay to the local board any salary payments received for days not yet worked. An employee who has been prepaid and who continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal or other appropriate discipline. The daily rate of pay shall equal the number of weekdays in the pay period. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of the employee's annual vacation days or to make up the day at a time agreed upon by the employee and the employee's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, an employee shall work on the scheduled

makeup day. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) School Employees Paid on an Hourly or Other Basis. — Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302.1(b) and 115C-316(a)(1) shall be made at a time determined by each local board of education. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that school employees employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal installments: Provided further, that any individual school employee employed for a term of 10 calendar months who is not employed in a year-round school may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Employees may be prepaid on the set pay date for days not yet worked. An employee who fails to attend scheduled workdays or who has not worked the number of days for which the employee has been paid and who resigns or is dismissed shall repay to the local board any salary payments received for days not yet worked. An employee who has been prepaid and who continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal or other appropriate discipline. The daily rate of pay shall equal the number of weekdays in the pay period. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, the employee shall work on the scheduled makeup day. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment as those designated by the State Personnel Commission for State employees.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten-or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than

30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by these employees shall be upon the authorization of their immediate supervisor and under policies established by the local board of education. Vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death or service retirement. Upon separation from service due to service retirement, any annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. Upon separation from service due to service retirement, any annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4a) Employees employed on a 10- or 11-month basis at year-round schools shall be employed for the same total number of days as employees employed for a period of 10 or 11 calendar months, respectively, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity, for employees who are employed on a 10- or 11-month basis at year-round schools, shall be equivalent to those of employees employed for 10 or 11 calendar months, respectively.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation

of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(b) Every local board of education may adopt, as to school officials other than superintendents, principals and supervisors not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) Longevity pay for 10-month employees is based on their annual salary and the longevity percentage may not be reduced by prorating the longevity pay for 10-month employees over a 12-month period.

(d) **(Expires June 30, 2004)** A local board of education may pay a retired teacher, as that term is defined in G.S. 115C-325(a)(5a) no more than the employee would have received on the teacher salary schedule, excluding longevity, had the employee not retired. (1955, c. 1372, art. 5, s. 32; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, ss. 2, 3; c. 730, s. 1; c. 946, s. 3; c. 947, s. 2; 1983, c. 872, ss. 5-7; 1985, c. 757, s. 145(g), (h); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, ss. 8, 9; 1989, c. 386, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 94; 1991, c. 689, s. 39.3(b); 1993, c. 98, s. 2; c. 321, s. 73(d), (e); c. 475, s. 2; 1995, c. 450, s. 21; 1997-443, s. 8.38(h), (i); 1998-212, s. 28.24(b); 1999-237, s. 28.26(e), (f); 2002-126, s. 28.10(a).)

Editor's Note. —

Session Laws 2002-126, s. 28.3A, as amended by Session Laws 2002-159, s. 82, provides: "Any person who is a full-time permanent employee on September 30, 2002, of (i) a local board of education, or (ii) the State, who is eligible for annual leave shall have a one-time additional 10 days of annual leave credited on that date. Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of this act are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. Employees paid under Section 7.45 of this act shall not be eligible for this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that maybe carried forward. Part-time permanent employees and 9- or 10-month employees shall receive a pro rata amount of the 10 days.

"The General Assembly encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees. Included within this may be salary increases within available funds to employees not receiving special annual leave bonuses."

Session Laws 2002-126, s. 28.10(a) amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subsection (d), as added by the 1998 act, from June 30, 2003, to June 30, 2004.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 21A.

Privacy of Employee Personnel Records.

§ 115C-319. Personnel files not subject to inspection.

Personnel files of employees of local boards of education, former employees of local boards of education, or applicants for employment with local boards of education shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the local board of education which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

Nothing in this section shall be construed to prevent local boards of education from disclosing the certification status and other information about employees as required by Section 1111(h)(6) of P.L. 107-110. (1987, c. 571, s. 1; 2002-126, s. 7.36.)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 7.36, effective July 1, 2002, added the second paragraph.

§ 115C-320. Certain records open to inspection.

Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief. (1987, c. 571, s. 1; 2002-171, s. 4.)

Editor's Note. — Session Laws 2002-171, s. 9, provides: "No General Fund appropriations shall be used to implement this act. The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are or will become available as a result of the settlement of the case entitled State of Florida, et al. v. Nine West Group, Inc., and John Does 1-500, Civil Action No. 00 CIV 1707 (BDP), U.S.D.C., Southern District of New York, or other grants or funds that are not appropriated from the General Fund."

Effect of Amendments. — Session Laws 2002-171, s. 4, effective January 1, 2003, inserted the next-to-last sentence.

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).

(4b) "Exchange teacher" means a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62.

(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, 2004)** "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any capacity, other than as a substitute teacher or a part-time tutor, with a local board of education for at least six months, immediately preceding the effective date of reemployment, is deter-

mined 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 (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers.

(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 either as a classroom teacher or instructional support personnel; 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. Workdays performed pending the outcome of a criminal history check as provided in G.S. 115C-332 are included in computing time as a probationary teacher.

(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.

(6) Status of Exchange Teachers. — Exchange teachers shall not be eligible to obtain career status. However, for purposes of determining eligibility to receive employment benefits under this Chapter, includ-

ing personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week.

(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; 2001-376, s. 2; 2001-424, ss. 28.11(g), 32.25(b);

2001-487, s. 74(c); 2002-110, ss. 2, 3; 2002-126, ss. 7.38, 28.10(a), (c), (d).)

Editor's Note. —

Session Laws 2002-126, s. 28.10(a) amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subdivision (a)(5a), as added by the 1998 act, from June 30, 2003, to June 30, 2004.

Session Laws 2002-126, s. 28.10(c) amended Session Laws 1998-217, s. 67.1 to change the expiration date affecting subdivision (a)(5a), as amended by the 1998 act, from June 30, 2003, to June 30, 2004.

Session Laws 2002-126, s. 28.10(d) amended Session Laws 2001-424, s. 32.25(c) to change the expiration date affecting subdivision (a)(5a), as amended by the 2001 act, from June 30, 2003, to June 30, 2004.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-110, ss. 2 and 3, effective July 1, 2002, added subdivisions (a)(4b) and (c)(6).

Session Laws 2002-126, s. 7.38, effective July 1, 2002, in the last sentence of subdivision (a)(5a), inserted "(i)", and inserted "and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers."

CASE NOTES

I. IN GENERAL.

Cited in Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 563 S.E.2d 258, 2002 N.C. App. LEXIS 488 (2002); Love-Lane v. Martin, 201 F. Supp. 2d 566, 2002 U.S. Dist. LEXIS 17219 (M.D.N.C. 2002).

III. CAREER TEACHERS.

A school board initially reviewing the results of a case manager's hearing, regarding the termination of a career employee, is bound by the whole record admitted and considered by the case manager; but, because G.S. 115C-325(j2)(7) contemplates a remand to the case manager if a majority of the board determines that the case manager did not address a critical factual issue, the school board may nevertheless view evidence excluded by the case manager but later submitted to the board in making its initial determination whether the case manager addressed all critical issues. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

If a school board chooses not to accept a case manager's report concerning the termination of a career employee as submitted to it, then pursuant to G.S. 115C-325(j2)(7), the board should determine either (1) that the case manager's findings of fact are not supported by substantial evidence admissible under G.S. 115C-325, in which case it can make alternative findings of fact; or (2) that the case manager failed to consider a critical factual issue, in which case the board should remand the matter for the case manager to make additional findings of fact; and where a board's conclusion that the case manager failed to consider a critical factual issue is based upon the case manager's rulings excluding evidence, the case manager, on remand, remains bound by the provisions of G.S. 115C-325 limiting the evidence which may properly be considered and within those limits may either reconsider or reaffirm those evidentiary rulings. A board may thereafter substitute its findings of fact for those of the case manager only if the case manager does not respond to the board's request within seven days. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

When a school board does not follow proper procedures in reviewing a case manager's report and recommendation concerning the termination of a career employee, it is bound by the case manager's findings of fact, pursuant to G.S. 150B-51(b)(3). Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

V. GROUNDS FOR DISMISSAL OR DEMOTION.

A school superintendent is not required to set out the facts supporting a case for termination of a career employee in complete detail prior to a hearing before a case manager, as the provisions of Chapter 115C, G.S. 115C-1 et seq., do not mirror the discovery proceedings in either criminal or civil cases. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Sexual Harassment and Inappropriate Conduct by Principal. — Affidavits showing that school principal propositioned for sex, pressed his body against others, unzipped his pants, and touched buttocks, among other things, provided substantial evidence to support school board's decision to terminate his employment; affidavits were properly received documentary evidence, under G.S. 115C-325(j2). Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 563 S.E.2d 258, 2002 N.C. App. LEXIS 488 (2002).

VI. NOTICE AND HEARING.

Advance Notice of Witnesses and Evidence. — Although G.S. 115C-325(j)(4) provides that formal rules of evidence do not apply to a hearing before a case manager regarding the termination of employment of a career employee of a board of education, there is no ambiguity in the notice requirements applicable to such a hearing set out in G.S. 115C-325(j)(5), which require that the employee be given advance notice of witnesses, their testimony, and documentary evidence. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Case Manager Not Authorized to Make Conclusions of Law. — Nowhere does G.S. 115C-325 authorize a case manager to reach conclusions of law in hearing a school superintendent's recommendation to terminate a career employee. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

VII. JUDICIAL REVIEW.

Creating Record for Review. — Where an appeal to the superior court, under G.S. 115C-325(n), presents a teacher his or her first opportunity to establish a record supporting allegations of impropriety before a school board considering termination of the teacher's employment, it is incumbent upon the teacher to create a record supporting the allegations at that time for any further reviewing courts. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

ARTICLE 23.

Employment Benefits.

§ 115C-336.1. Parental leave.

A school employee may use annual leave or leave without pay to care for a newborn child or for a child placed with the employee for adoption or foster care. A school employee may also use up to 30 days of sick leave to care for a child placed with the employee for adoption. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the school employee and the local board of education agree otherwise. (2002-159, s. 37.5(b).)

Editor's Note. — Session Laws 2002-159, s. 92, made this section effective October 11, 2002.

Article 24C.

Teacher Enhancement Program.

Part 2. North Carolina Teaching Fellows Commission.

§ 115C-363.23A. Teaching Fellows Program established; administration.

(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of six thousand five hundred dollars ($6,500) per year to North Carolina high school seniors interested in preparing to teach in the public schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them.

(b) The Commission shall administer the program in cooperation with teacher training institutions selected by the Commission. Teaching Fellows should be exposed to a range of extra-curricular activities while in college. These activities should be geared to instilling a strong motivation not only to remain in teaching but to provide leadership for tomorrow's schools.

(c) The Commission shall form regional review committees to assist it in identifying the best high school seniors for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in teaching to enter the program.

(d) All scholarship loans shall be evidenced by notes made payable to the Commission that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Commission.

(e) The Commission shall forgive the loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive the loan if, within seven years after graduation, the recipient teaches for three consecutive years, unless the recipient takes an approved leave of absence, at a North Carolina public school in a local school administrative unit that, at the time the recipient accepts employment with the unit, is a low-performing school system identified in accordance with Article 6A of this Chapter or is on warning status as defined by the State Board of Education. The Commission shall also forgive the loan if it finds that it is impossible for the recipient to teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient.

(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

The Public School Forum, as administrator for the Teaching Fellows Program, may use up to one hundred fifty thousand dollars ($150,000) annually from the fund balance for costs associated with administration of the Teaching Fellows Program.

(g) The State Education Assistance Authority is responsible for the collection of a loan awarded under this section if the loan repayment is outstanding for more than 30 days. (1985 (Reg. Sess., 1986), c. 1014, s. 63(a); 1989 (Reg. Sess., 1990), c. 1066, s. 101(a), (b); 1991 (Reg. Sess., 1992), c. 1030, s. 29; 1993, c. 330, s. 1; 1998-212, s. 9.19(a); 1999-237, s. 8.12; 2002-126, ss. 9.2(c), (d).)

Editor's Note. — Session Laws 2002-126, s. 9.2(a), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the North Carolina Teaching Fellows Commission relating to the collection of loans awarded under G.S. 115C-363.23A when the loan repayments are outstanding for more than 30 days are transferred from the North Carolina Teaching Fellows Commission to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 9.2(c) and (d), effective July 1, 2002, deleted the last sentence of subsection (f), which read: "These funds are in addition to funds required for collection costs related to loan repayments"; and added subsection (g).

SUBCHAPTER VI. STUDENTS.

ARTICLE 25.

Admission and Assignment of Students.

§ 115C-364. Admission requirements.

Cross References. — As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

§ 115C-366. Assignment of student to a particular school.

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents shall be considered legal residents of the local school administrative unit in which the institution is located. These

children shall be deemed to qualify for admission to the public schools of the local school administrative unit as provided in this section. This subsection shall apply to foster homes and group homes.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless child, as defined in this subsection, tuition for enrollment. The child's parent, guardian, or person standing in loco parentis to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of:
   a. The death, serious illness, or incarceration of a parent or legal guardian,
   b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,
   c. Abuse or neglect by the parent or legal guardian,
   d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, or
   e. The loss or uninhabitability of the student's home as the result of a natural disaster;
(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit; and
(3) The adult with whom the student resides and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:
   a. Confirm the qualifications set out in this subsection establishing the student's residency,
   b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and
   c. Attest that the adult with whom the student is residing has been given and accepts responsibility for educational decisions for the child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.

For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the adult with whom the student is living shall attest to that fact in the affidavit.

Upon receipt of both affidavits or an affidavit from the adult with whom the student is living that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to his parent's or guardian's service in the General Assembly, other than the local school administrative unit in which he is domiciled, is entitled to attend school in the local school administrative unit of that residence as if he were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment pursuant to this Article as long as the address is kept confidential from the public under the provisions of Chapter 15C of the General Statutes. The substitute address designated by the Attorney General shall not be used as an address for admission or assignment purposes. (1955, c. 366, s. 1; c. 1372, art. 19, s. 3; 1956, Ex. Sess., c. 7, s. 1; 1971, c. 153; 1981, c. 423, s. 1; c. 567, s. 1; 1991, c. 407, s. 1; c. 719, s. 2; 1997-271, s. 1; 1997-443, s. 8.29(d); 2002-171, s. 5.)

Effect of Amendments. — Session Laws 2002-171, s. 5, effective January 1, 2003, added subsection (g).

Article 26.

Attendance.

Part 1. Compulsory Attendance.

§ 115C-378. Children required to attend.

Editor's Note. — Session Laws 2002-178, s. 4, provides: "The Joint Legislative Education Oversight Committee shall study whether raising the compulsory attendance age to 18 will reduce the dropout rate and increase the high school graduation rate. The Committee shall report its findings and recommendations to the 2003 General Assembly."

Article 27.

Discipline.

§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

CASE NOTES

Cited in In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002), cert. granted, 356 N.C. 163, 569 S.E.2d 282 (2002).

Article 29.

Protective Provisions and Maintenance of Student Records.

§ 115C-402. Student records; maintenance; contents; confidentiality.

(a) The official record of each student enrolled in North Carolina public schools shall be permanently maintained in the files of the appropriate school after the student graduates, or should have graduated, from high school unless the local board determines that such files may be filed in the central office or other location designated by the local board for that purpose.

(b) The official record shall contain, as a minimum, adequate identification data including date of birth, attendance data, grading and promotion data, and such other factual information as may be deemed appropriate by the local board of education having jurisdiction over the school wherein the record is maintained. Each student's official record also shall include notice of any suspension for a period of more than 10 days or of any expulsion under G.S. 115C-391 and the conduct for which the student was suspended or expelled. The superintendent or the superintendent's designee shall expunge from the record the notice of suspension or expulsion if the following criteria are met:

(1) One of the following persons makes a request for expungement:
   a. The student's parent, legal guardian, or custodian.
   b. The student, if the student is at least 16 years old or is emancipated.
(2) The student either graduates from high school or is not expelled or suspended again during the two-year period commencing on the date of the student's return to school after the expulsion or suspension.
(3) The superintendent or the superintendent's designee determines that the maintenance of the record is no longer needed to maintain safe and orderly schools.
(4) The superintendent or the superintendent's designee determines that the maintenance of the record is no longer needed to adequately serve the child.

(c) Notwithstanding subdivision (b)(1) of this section, a superintendent or the superintendent's designee may expunge from a student's official record any notice of suspension or expulsion provided all other criteria under subsection (b) are met.

(d) Each local board's policy on student records shall include information on the procedure for expungement under subsection (b) of this section.

(e) The official record of each student is not a public record as the term "public record" is defined by G.S. 132-1. The official record shall not be subject to inspection and examination as authorized by G.S. 132-6.

(f) The actual address and telephone number of a student who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes or a student with a parent who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall be kept confidential from the public and shall not be disclosed except as provided in Chapter 15C of the General Statutes. (1975, c. 624, ss. 1, 2; 1981, c. 423, s. 1; 1985, c. 268; c. 416; 1997-443, s. 8.29(s); 2001-195, s. 1; 2002-171, s. 6.)

Effect of Amendments. —
Session Laws 2002-171, s. 6, effective January 1, 2003, added subsection (f).

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

§ 115C-424. Uniform system; conflicting laws and local acts superseded.

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Meaning of "Local Current Expense Appropriation.". — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

Part 2. Budget.

§ 115C-426. Uniform budget format.

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Legislative Intent. — The General Assembly clearly intended that the operating expenses of the public school systems be included in a single local expense fund which expressly includes penal fines and forfeitures and supplemental taxes levied by or on behalf of the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

What Is Included in Local Current Expense Fund. — Reading G.S. 115C-452 and G.S. 115C-430 in pari materia, it is clear that fines and forfeitures are appropriated to the local current expense fund, which is used for the local school administrative unit's current operating expenses. Therefore, the appropriations included in the local current expense funded — fines and forfeitures, supplemental school taxes and county budgetary appropriations — are local current expense appropriations to the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

Charter School Funding. — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

§ 115C-430. Apportionment of county appropriations among local school administrative units.

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

What Is Included in Current Local Expense Fund. — Reading G.S. 115C-452 and G.S. 115C-430 in pari materia, it is clear that fines and forfeitures are appropriated to the local current expense fund, which is used for the local school administrative unit's current operating expenses. Therefore, the appropriations included in the local current expense fund — fines and forfeitures, supplemental school taxes and county budgetary appropriations — are local current expense appropriations to the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

Part 3. Fiscal Control.

§ 115C-437. Allocation of revenues to the local school administrative unit by the county.

CASE NOTES

Use of Penal Fines. — Where a local ordinance was passed to enforce state-mandated air quality standards was a penal law, the penalties imposed for the violation of the ordinance were punitive in nature, and the payment of those penalties was payable to the school board under G.S. 115C-437. Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

§ 115C-452. Fines and forfeitures.

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

What Is Included in Local Current Expense Fund. — Reading G.S. 115C-452 and G.S. 115C-430 in pari materia, it is clear that fines and forfeitures are appropriated to the local current expense fund, which is used for the local school administrative unit's current operating expenses. Therefore, the appropriations included in the local current expense fund — fines and forfeitures, supplemental school taxes and county budgetary appropriations — are local current expense appropriations to the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

Article 31A.

Civil Penalty and Forfeiture Fund.

§ 115C-457.1. Creation of Fund; administration.

Editor's Note. —

Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Meaning of "Local Current Expense Appropriation". — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

§ 115C-457.2. Remittance of moneys to the Fund.

CASE NOTES

Cited in Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

§ 115C-457.3. Transfer of funds to the State School Technology Fund.

CASE NOTES

Cited in Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

Article 32A.

Scholarship Loan Fund for Prospective Teachers.

§ 115C-468. Establishment of fund.

Editor's Note. —

Session Laws 2002-126, s. 9.2(b), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Public Instruction relating to the collection of loan repayments for loans awarded under Article 32A of Chapter 115C of the General Statutes when the loans are outstanding for more than 30 days are transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 115C-472.1. State Education Assistance Authority collect loan repayments.

The State Education Assistance Authority is responsible for the collection of a loan awarded under this Article if the loan repayment is outstanding for more than 30 days. (2002-126, s. 9.2(e).)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 9.2(a), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the North Carolina Teaching Fellows Commission relating to the collection of loans awarded under G.S. 115C-363.23A when the loan repayments are outstanding for more than 30 days are transferred from the North Carolina Teaching Fellows Commission to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 9.2(b), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Public Instruction relating to the collection of loan repayments for loans awarded under Article 32A of Chapter 115C of the General Statutes when the loans are outstanding for more than 30 days are transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 34A.

Critical School Facility Needs Fund.

§ 115C-489.1. (For contingent repeal see note) Creation of Fund; administration.

Editor's Note. —

Session Laws 2002-126, s. 7.16(a), provides: "Notwithstanding the provisions of G.S. 115C-489.1(b), the Secretary of Revenue shall not deposit any funds in the Critical School Facility Needs Fund during the 2002-2003 fiscal year but shall deposit in the State Public School Fund the funds that would have otherwise been deposited in the Critical School Facility Needs Fund pursuant to G.S. 115C-489.1(b)."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

Article 36.

Voted Tax Supplements for School Purposes.

§ 115C-501. Purposes for which elections may be called.

Editor's Note. —

Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Meaning of "Local Current Expense Appropriation". — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

SUBCHAPTER IX. PROPERTY.

ARTICLE 37.

School Sites and Property.

§ 115C-518. Disposition of school property; easements and rights-of-way.

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 3; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 3; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 3; Cabarrus: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Carteret: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 3; Cleveland: 1995, c. 201, s. 1; Duplin: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Durham Public Schools: 1997-64; Forsyth: 1993 (Reg. Sess., 1994, c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 2; Hyde: 1981, c. 877; Iredell: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 624, s. 3; Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 3; Richmond: 1991 (Reg. Sess., 1992), c. 898; Rowan: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 4; Stanly: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Asheville-Buncombe Technical Community College: 2000-99, s. 1; Bladen County Board of Education: 1991 (Reg. Sess., 1992), c. 853; city of Burlington Board of Education: 1993, c. 277, s. 3; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Davie County Board of Education: 1985, c. 18; county of Duplin, town of Kenansville, and Duplin County Board of Education: 1987, c. 50; Graham County Board of Education: 1995, c. 154, s. 2; Hertford County Board of Education: 1985, c. 123, s. 2; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, Second Ex. Sess., c. 16, s. 1; Transylvania County Board of Education: 1983, c. 579; Albemarle City School Administrative Unit: 1985, c. 74.

§ 115C-522. Provision of equipment for buildings.

Editor's Note. — Session Laws 2002-107, s. 3, provides: "Notwithstanding any other provision of law to the contrary, the Secretary may conduct a pilot program for reverse auctions. The reverse auctions shall be utilized only for the purchase or exchange of those supplies, equipment, and materials as provided in G.S. 115C-522, for use by the public school systems. The Secretary shall report the results of the pilot program to the Joint Select Committee on Information Technology, upon the convening of the 2003 General Assembly."

ARTICLE 38A.

Public School Building Capital Fund.

§ 115C-546.1. Creation of Fund; administration.

Editor's Note. —

Session Laws 2002-126, s. 7.16(b), provides: "Notwithstanding the provisions of G.S. 115C-546.1(b), the Secretary of Revenue shall not remit any funds for credit to the Public School Building Capital Fund during the 2002-2003 fiscal year but shall deposit in the State Public School Fund the funds that would have otherwise been deposited in the Public School Building Capital Fund pursuant to G.S. 115C-546.1(b). The Department of Public Instruction may continue to use these funds to support six positions in the School Planning Division."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to

funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Chapter 115D.
Community Colleges.

Article 1.

General Provisions for State Administration.

Article 1.
General Provisions for State Administration.

§ 115D-2.1. State Board of Community Colleges.

Editor's Note. —

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 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 extensionunits 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 Community Corrections 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) **(See editor's note)** 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.

(m) The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges.

(n) The North Carolina Community Colleges System Office shall provide the Department of Revenue with a list of all community colleges, including name, address, and other identifying information requested by the Department of Revenue. The North Carolina Community Colleges System Office shall update this list whenever there is a change. (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); 2001-111, s. 1; 2001-427, s. 9(b); 2001-487, s. 47(e).)

Editor's Note. —

Session Laws 2002-126, s. 8.2, provides: "It is the intent of the General Assembly to increase the number of regional program offerings in community colleges and to reduce duplication of programs by colleges that are within reasonably close proximity to each other; therefore, the State Board of Community Colleges shall review existing programs to determine which of the existing programs can be offered regionally. In developing new programs, the State Board of Community Colleges shall consider whether a regional approach can be used, and to the extent possible, shall initiate new programs on a regional basis.

"The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee on all new programs it approved and on the progress made on regional programs during the year. The report shall include the specific reasons for which each new program was approved, a progress report on regionalization of programs, and a list of program terminations approved by the State Board."

Article 2.

Local Administration.

§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated property.

Local Modification. — Chatham: 1995, c. 80, s. 2; Gaston: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Montgomery: 1995, c. 154, s. 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note) Nash: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Sampson: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note), 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Wilson: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Asheville-Buncombe Technical Community College: 2000-99, ss. 1, 2; Board of Trustees of College of the Albemarle: 2002-57, s. 1 (expiring December 31, 2005); Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expiring December 31, 2005).

Article 3.

Financial Support.

§ 115D-32. Local financial support of institutions.

OPINIONS OF ATTORNEY GENERAL

Adequacy of Funds Provided to Community College. — The adequacy of the funds provided to a community college pursuant to statute should be determined by the degree to which these funds meet the financial needs of that college for the budget items identified in the statute, which is necessarily a fact-intensive inquiry. See opinion of Attorney General to Dr. Ted H. Gasper, Jr., President, Halifax Community College, 2000 N.C. AG LEXIS 26 (6/14/2000).

Article 8.

Proprietary Schools.

§ 115D-88. Exemptions.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — The State Board of Community Colleges has neither the legal authority nor responsibility to license massage and bodywork therapy schools pursuant to Article 8 of Chapter 115D, G.S. 115D-87 et seq., even if massage and bodywork therapy schools do not want to be exempt from Article 8 of Chapter 115D, and even though the North Carolina Board of Massage and Bodywork Therapy has only the authority to approve rather than license massage and bodywork therapy schools. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-95. Bonds required.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-96. Operating school without license or bond made misdemeanor.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-97. Contracts with unlicensed schools and evidences of indebtedness made null and void.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

Part 2. Organization, Governance and Property of the University.

§ 116-3. Incorporation and corporate powers.

Editor's Note. —

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2002-126, s. 9.16, provides: "The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on:

"(1) Any financing of buildings or other facilities, regardless of the ownership of those buildings or other facilities, located on land owned by The University of North Carolina or the constituent institutions of The University of North Carolina; and

"(2) All fiscal liabilities or contingent liabilities, including payments for debt service or other contractual arrangements, of The University of North Carolina or any constituent institution."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Op-

erations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 116-6. Election and terms of members of Board of Governors.

CASE NOTES

Standing to Challenge Statute. — State residents had standing to challenge a state law governing election to the state university's board of governors that required that certain categories of minorities have two members each on the board, even though the residents had not been nominated to the election slate and were thus unable to compete for the vacancies. Davis v. State, 180 F. Supp. 2d 774, 2001 U.S. Dist. LEXIS 23257 (E.D.N.C. 2001).

§ 116-11. Powers and duties generally.

Professional Development for Public School Professionals. — Session Laws 2001-424, ss. 31.4(c) to (e), as amended by Session Laws 2002-126, s. 7.17(h), provide: "(c) The Joint Legislative Education Oversight Committee shall hire an independent consultant to study and make recommendations regarding professional development for public school professionals in North Carolina. The consultant shall study:

"(1) The professional development programs administered under the UNC Center for School Leadership Development with regard to their mission, governance structure, efficiency, and objectively measurable effectiveness in increasing student achievement.

"(2) The feasibility and merits of consolidating and reducing the number of professional development programs.

"(3) The possibility of regionalizing professional development programs and using a cooperative arrangement between higher educational institutions and community colleges in a region to achieve the goal.

"(4) The professional development support offered by the Department of Public Instruction.

"(5) The use of professional development funds allocated to local school administrative units and individual schools.

"(6) National research regarding effective methods for delivering professional development that is shown to improve student achievement.

"The consultant shall report these findings to the Joint Legislative Education Oversight Committee and also shall make recommendations regarding how existing State funds should be utilized to provide effective and efficient professional development for public school professionals.

"(d) The Joint Legislative Education Oversight Committee shall review the consultant's findings and recommendations and shall submit to the 2003 General Assembly recommendations to streamline, reorganize, and improve the delivery of professional development for public school professionals. The recommendations may address revisions to program governance and mission, reallocation of funds, methods of program delivery, and methods to institute ongoing program evaluation.

"(e) The Joint Legislative Education Oversight Committee shall review the reports that are required to be made to the Committee. The purpose of the review is to determine which reports must include information that is research-based, proven in practice, and designed for data-driven research. The Committee may make recommendations for changes in these reports based upon the Committee's findings."

Editor's Note. — Session Laws 2002-126, s. 9.9, provides: "The Board of Governors of the University of North Carolina may allow Elizabeth City State University, the University of North Carolina at Pembroke, and Western Carolina University each to allocate up to one hundred seventy-eight thousand three hundred eighty dollars ($178,380) of the funds allocated to them for focused enrollment growth for a maximum of 20 Prospective Teacher Scholars. These funds may be used to recruit new nonresident students to enter into agreements to: (i) pursue a full-time course of study that will lead to teacher certification in North Carolina and (ii) teach in a North Carolina public school or a school operated by the United States government in North Carolina for one year for each

year that they receive this benefit. The Board of Governors shall establish guidelines and regulations for this pilot program, including methodology for determining its success in increasing the supply of qualified teachers for North Carolina public schools. The Board shall report its guidelines and regulations to guide these pilot programs to the Joint Legislative Education Oversight Committee by November 15, 2002. The Board shall report annually to the Committee on the progress of the pilot programs and their costs."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 116-13.2. Report on University Fiscal Liabilities.

The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on:

(1) Any financing of buildings or other facilities, regardless of the ownership of those buildings or other facilities, located on land owned by The University of North Carolina or the constituent institutions of The University of North Carolina; and

(2) All fiscal liabilities or contingent liabilities, including payments for debt service or other contractual arrangements, of The University of North Carolina or any constituent institution. (2002-126, s. 9.16.)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 116-17.2. Flexible Compensation Plan.

OPINIONS OF ATTORNEY GENERAL

Voluntary Indemnity Plan. — The statutes that govern the Teachers' and State Employees' Comprehensive Major Medical Plan and the Statewide Flexible Benefits Program permit the Statewide Flexible Benefits Program to offer a voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits. See opinion of Attorney General to Mr. Carl Goodwin, Director, Risk Control Services, Office of State Personnel, 2001 N.C. AG LEXIS 40 (10/3/01).

The University of North Carolina, or some of its campuses, may not offer a cafeteria plan which allows pre-tax premiums for dependent health coverage as such competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits. See opinion of Attorney General to Leslie Winner, Vice President and General Counsel, University of North Carolina, 2002 N.C. AG LEXIS 15 (3/26/02).

§ 116-19. Contracts with private institutions to aid North Carolina students; reporting requirement.

(a) In order to encourage and assist private institutions to continue to educate North Carolina students, the State Education Assistance Authority may enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were

received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the State Education Assistance Authority would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated. For purposes of this subsection, "needy North Carolina students" are those eligible students who have financial need as determined by the institution under the institutional methodology or the federal methodology as defined by the State Education Assistance Authority. For purposes of this subsection, "institutional methodology" means a need-analysis formula, developed by College Scholarship Service, that determines the student's and family's capacity to pay for postsecondary education each year.

(b) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students enrolled in off-campus programs. An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall include in its annual report to the Joint Legislative Education Oversight Committee the information it has compiled and its findings regarding this program. (1971, c. 744, s. 1; c. 1244, s. 5; 1993, c. 321, s. 80(d); 2001-424, s. 31.1(b); 2002-69, s. 1.)

Effect of Amendments. — Session Laws 2002-69, s. 1, effective August 12, 2002, added the last two sentences in subsection (a).

§ 116-21.4. Limitations on expenditures.

(a) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 may be used only for secular educational purposes at nonprofit institutions of higher learning that meet the qualifications set out in G.S. 116-22.

(b) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 shall not be used for any student who:

(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years. (2001-424, s. 31.1(a); 2002-126, s. 9.6.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 9.6, effective July 1, 2002, substituted "nonprofit institutions of higher learning that meet the qualifications set out in G.S. 116-22" for "an institution as defined by G.S. 116-22" at the end of subsection (a).

§ 116-22. Definitions applicable to §§ 116-19 to 116-22.

As used in G.S. 116-19 through 116-22:

(1) "Institution" shall mean an educational institution with a main permanent campus located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof that satisfies all of the following:

a. Is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association or by the New England Association of Schools and Colleges through its Commission on Institutions of Higher Education.

b. Awards a postsecondary degree as defined in G.S. 116-15.

c. Is not a seminary, Bible school, Bible college or similar religious institution.

(1a) "Main permanent campus" shall mean a campus owned by the institution that provides permanent on-premises housing, food services, and classrooms with full-time faculty members and administration that engages in postsecondary degree activity as defined in G.S. 116-15.

(2) "Student" shall mean a person enrolled in and attending an institution located in the State who qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University of North Carolina may promulgate. The enrollment figures required by G.S. 116-19 through 116-22 shall be the number of full-time equivalent students as computed under regulations prescribed by the Board of Governors of the University of North Carolina. Qualification for in-State tuition under G.S. 116-143.3 makes a person a "student" as defined in this subdivision. (1971, c. 744, s. 4; c. 1244, s. 5; 1983 (Reg. Sess., 1984), c. 1034, s. 59; 1987, c. 830, s. 93(d); 2002-126, s. 9.11(a); 2002-159, s. 38.)

Editor's Note. — Session Laws 2002-126, s. 9.11(b), provides: "Notwithstanding the provisions of G.S. 116-22 as enacted by this section, any institution that met the definition of 'institution' under G.S. 116-22 on January 1, 2001, shall continue to be eligible to receive funds appropriated in compliance with G.S. 116-19 through G.S. 116-22 when this act becomes law, if it received funds for these purposes as of January 1, 2001.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 9.11(a), effective July 1, 2002, rewrote subdivision (1); added subdivision (1a); and added "a person enrolled in and attending an institution's main permanent campus located in the State who qualifies as" to the first sentence of subdivision (2).

Session Laws 2002-159, s. 38, effective October 11, 2002, substituted "an institution" for "an institution's main permanent campus" in subdivision (2), as amended by Session Laws 2002-126, s. 9.11(a).

Part 3. Constituent Institutions.

§ 116-37. University of North Carolina Health Care System.

Editor's Note. — Session Laws 2002-159, s. 91, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted by the University of North Carolina School of Medicine and the Psychology Department within the School of Arts and Sciences at the University of North Carolina at Chapel Hill at Dorothea Dix Hospital and John Umstead Hospital, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the School of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry, and the University of North Carolina School of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. Likewise, the Secretary shall consult with the University of North Carolina School of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina School of Arts and Sciences."

OPINIONS OF ATTORNEY GENERAL

Acquisition of Nonprofit Corporation by University of North Carolina Health Care System. — After the acquisition of a nonprofit corporation by the University of North Carolina Health Care System, the corporation would not be directly subject to the same statutory oversight requirements imposed upon the system and other public entities, but would be indirectly subject to a substantial degree of public accountability through the statutory requirements imposed upon the system, which remained subject to the provisions of the Executive Budget Act, including all aspects of budget preparation, budget execution, and expenditure reporting. See opinion of Attorney General to Representative Daniel T. Blue, Jr., 2000 N.C. AG LEXIS 23 (3/8/2000).

Article 5C.

North Carolina Principal Fellows Program.

§ 116-74.42. Principal Fellows Program established; administration.

OPINIONS OF ATTORNEY GENERAL

Commission May Approve School Administrator Programs at Private Institutions and May Award Scholarship Loans to Qualified Persons in Such Programs. — The Principal Fellows Commission has broad authority to approve school administrator programs at private institutions and to permit persons enrolled in such programs to participate in the Principal Fellows Program. See opinion of Attorney General to Karen F. Gerringer, Director, North Carolina Principal Fellows Program, 1999 N.C. AG LEXIS 23 (7/2/99).

ARTICLE 23.

State Education Assistance Authority.

§ 116-204. Powers of Authority.

The Authority is hereby authorized and empowered:

(1) To fix and revise from time to time and charge and collect fees for its acts and undertakings;

(2) To establish rules and regulations concerning its acts and undertakings;

(3) To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;

(4) 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;

(5) To employ, in its discretion, consultants, attorneys, accountants, and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation to be payable from funds made available to the Authority by law;

(6) To receive and accept from any federal or private agency, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the State, from any municipality, county or other political subdivision thereof and from any other source aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(7) To sue and to be sued; to have a seal and to alter the same at its pleasure; and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with law to carry into effect the powers and purposes of the Authority;

(8) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this Article; provided, however, that nothing in this Article shall be construed to empower the Authority to engage in the business of banking or insurance.

(9) To collect loan repayments for loans awarded under the Teaching Fellows Program pursuant to G.S. 115C-363.23A if the loan repayment is outstanding for more than 30 days.

(10) To collect loan repayments for loans awarded from the Scholarship Loan Fund for Prospective Teachers pursuant to Article 32A of Chapter 115C of the General Statutes if the loan repayment is outstanding for more than 30 days. (1965, c. 1180, s. 1; 2002-126, s. 9.2(f).)

Editor's Note. — Session Laws 2002-126, s. 9.2(a), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the North Carolina Teaching Fellows Commission relating to the collection of loans awarded under G.S. 115C-363.23A when the loan repayments are outstanding for more than 30 days are transferred from the North Carolina Teaching Fellows Commission to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 9.2(b), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Public Instruction relating to the collection of loan repayments for loans awarded under Article 32A of Chapter 115C of the General Statutes when the loans are outstanding for more than 30 days are transferred from the Department of

Public Instruction to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 9.2(f), effective July 1, 2002, added subdivisions (9) and (10).

§ 116-209.3. Additional powers.

OPINIONS OF ATTORNEY GENERAL

Advancement of Funds to Make Federal Family Education Loans. — The State Education Assistance Authority has the authority to create and administer an institutional, student loan program under which the authority would advance funds from the North Carolina Student Loan Fund to qualified institutions to enable those institutions to make Federal Family Education Loans, under the Higher Education Act of 1965, as amended, directly to and for the convenience of their graduate and professional students. See opinion of Attorney General to Steven E. Brooks, Executive Director, North Carolina State Education Assistance Authority, 2000 N.C. AG LEXIS 9 (5/5/2000).

§ 116-209.25. 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. Nothing in this Article shall be construed to prohibit the Authority from accepting, holding, and investing contributions from persons who reside outside of North Carolina. 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 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 Securities 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; 2001-243, s. 1; 2002-159, s. 19.)

Effect of Amendments. — Session Laws 2002-159, s. 19, effective October 11, 2002, substituted "Securities and Exchange Commission" for "Security and Exchange Commission" in subdivision (c1)(2).

Article 29.

The North Carolina School of Science and Mathematics.

§ 116-235. Board of Trustees; powers and duties.

(a) Academic Program. —

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. —

(1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be a legal resident of the State, as defined by G.S.116-143.1(a)(1); eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of rising high school juniors offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 3 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Director, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) Personnel. —

(1) Faculty Members. — Members of the faculty of the School shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt all policies and regulations governing the qualifications, criteria for employment, assignment, health requirements, terms and conditions of employment, compensation and benefits, and the supervision and management of all faculty members of the School, and such system of employment and employment security as the Board of Trustees may deem to be appropriate.

(2) Senior Administrative Officers. — The senior administrative officers of the School shall consist of a Director, as provided by G.S. 116-236, and such other senior academic and administrative officers as shall be selected and employed by the Board of Trustees. They shall be governed by such policies and regulations and provisions for compensation as the Board of Trustees may adopt, and shall be exempt from the State Personnel Act.

(3) Other Employees. — All other employees of the School shall be subject to the State Personnel Act and to such supplemental policies and

regulations, not inconsistent therewith, as may be adopted by the Board of Trustees.

(4) All employees of the School shall be deemed to be employees of the State and shall be covered by all provisions of State law relevant thereto, including Chapter 97, Chapter 135, and Article 31A of Chapter 143 of the General Statutes.

(d) Finances, Property, Obligations. —

(1) The Board of Trustees shall develop, prepare, and present to the Board of Governors a recommended budget for the School, which shall be transmitted by the Board of Governors to the General Assembly.

(2) Subject to all applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Trustees may acquire, hold, convey or otherwise dispose of, and invest or reinvest any and all real and personal property, except that the Board of Trustees may not convey any of the land constituting the campus, except for necessary easements, without the approval of the General Assembly. All power and authority exercised with regard to the acquisition, operation, maintenance, and disposition of real and personal property shall be subject to the provisions of Chapters 143 and 146 of the General Statutes except as provided in G.S. 116-238.

(3) The Board of Trustees is authorized to accept, receive, and use any federal funds, or aids, that may be made available by the federal government which, in the judgment of the Board of Trustees, would be beneficial to the operation of the School.

(4) The Board of Trustees is authorized to establish a permanent endowment fund as provided in G.S. 116-238.

(5) The lands and other property of the School shall be exempt from all kinds of public taxation, except as may be provided for by State law.

(6) The Board of Trustees may establish policies and regulations for the sale of goods and services, not inconsistent with the provisions of Article 11 of Chapter 66 of the General Statutes.

(7) The Board of Trustees shall not impose any fee without the approval of the General Assembly, unless the fee is a traffic, parking, or motor vehicle registration fee authorized under subsection (e) of this section.

(e) Regulation of Traffic and Parking and Registration of Motor Vehicles. —

(1) Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this subsection:

a. "Board of Trustees" means the Board of Trustees of the North Carolina School of Science and Mathematics.

b. "Campus" means that School property, without regard to location, which is used wholly or partly for the purposes of the North Carolina School of Science and Mathematics.

c. "School property" means property owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Trustees of the North Carolina School of Science and Mathematics.

(2) Except as otherwise provided in this subsection, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structure on School property. Nothing in this subsection modifies any rights of ownership or control of School property, now or hereafter vested in the Board of Trustees or the State of North Carolina.

(3) The Board of Trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of

motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the Board of Trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the Board of Trustees. The Board of Trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this section.

(4) The Board of Trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the School, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(5) The Board of Trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the School and members of the general public attending schools, conferences, or meetings at the School, visiting or making use of any School facilities, or attending to official business with the School. The Board of Trustees may issue permits to park in these lots and garages and may charge a fee therefor. The Board of Trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.

(6) The Board of Trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the Board of Trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The Board of Trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(7) The Board of Trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(8) Violation of an ordinance adopted under any portion of this subsection is a Class 3 misdemeanor. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(9) An ordinance adopted under any portion of this subsection may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. The Board of Trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The Board of Trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the School.

(10) An ordinance adopted under any portion of this subsection may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether the School does its own removal and disposal of motor vehicles or contracts with another person to do so, the School shall provide a hearing procedure for the owner. For purposes of this subdivision, the definitions in G.S. 20-219.9 apply.
a. If the School operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
b. If the School operates in such a way that it is responsible for collecting towing fees, it shall:
1. Provide by contract or ordinance for a schedule of reasonable towing fees,
2. Provide a procedure for a prompt fair hearing to contest the towing,
3. Provide for an appeal to district court from that hearing,
4. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
5. If the School chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the School may destroy it.

(11) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the Board of Trustees is prima facie evidence that the vehicle was parked by:
a. The person holding a School parking permit for the vehicle, or
b. If no School parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the School pursuant to subdivision (3), above, or
c. If no School parking permit has been issued for the vehicle and the vehicle is not registered with the School, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.
The rule of evidence established by this subdivision (11) applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the Board of Trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(12) The Board of Trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(13) All ordinances adopted under this subsection shall be recorded in the minutes of the Board of Trustees and copies thereof shall be filed in the office of the Secretary of State. The Board of Trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(14) All moneys received pursuant to this subsection shall be placed in a trust account of the School and may be used for any of the following purposes:
a. To defray the cost of administering and enforcing ordinances adopted under this subsection;
b. To develop, maintain, and supervise parking areas and facilities;
c. To fulfill other purposes related to parking, traffic, and transportation on the campus.

(f) Status as a Body Politic and Corporate. — The Board of Trustees of the School is hereby made a body corporate and politic, to be known and

distinguished as "The Board of Trustees of the North Carolina School of Science and Mathematics." The Board of Trustees shall be capable in law to sue and be sued and of prosecuting and defending suits for or against the corporation, subject to the provisions of G.S. 114-2 and G.S. 147-17.

(g) The Board of Trustees may adopt such other policies and regulations as it may consider necessary and expedient for the operation and management of the affairs of the School, not inconsistent with the provisions of this Article.

(h) The Board of Trustees shall keep the Board of Governors fully and promptly informed, through the President of The University of North Carolina, concerning activities of the Board of Trustees, including notices of meetings and copies of the minutes of all such meetings. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1; 2002-126, s. 9.12(c).)

Editor's Note. —

Session Laws 2002-126, s. 9.12(b), provides: "Notwithstanding any other provision of law, neither the fee of eight hundred fifty dollars ($850.00) proposed by the Board of Trustees or any other fee shall be imposed for the 2002-2003 academic year."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 9.12(c), effective July 1, 2002, added subdivision (d)(7).

Chapter 116B.

Escheats and Abandoned Property.

Article 1.

Escheats.

§ 116B-1. Escheats to Escheat Fund.

OPINIONS OF ATTORNEY GENERAL

Insurance Statute Violations. — The escheats law does not apply to monetary payments collected by the Commissioner of Insurance from regulated persons and businesses for failure to comply with insurance statutes. See opinion of Attorney General to Mr. Peter Kolbe, General Counsel, North Carolina Department of Insurance, 2000 N.C. AG LEXIS 31 (2/9/2000).

§ 116B-7. Distribution of income of fund.

The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 15 to the State Education Assistance Authority for grants and loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. Such grants and loans shall be made upon terms, consistent with the provisions of this Chapter, pursuant to which the State Education Assistance Authority makes grants and loans to other students under G.S. 116-201 to 116-209.23, Article 23 of Chapter 116 of the General Statutes, policies of the Board of Governors of The University of North Carolina regarding need-based grants for students of The University of North Carolina, and policies of the State Board of Community Colleges regarding need-based grants for students of the community colleges. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 3(b); 2002-126, s. 9.19(a).)

Editor's Note. —

Session Laws 2002-126, s. 9.19(b), provides: "There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of nineteen million seven hundred twenty-five thousand dollars ($19,725,000) for the 2002-2003 fiscal year and to the State Board of Community Colleges the sum of one million dollars ($1,000,000) for the 2002-2003 fiscal year. These funds shall be allocated by the State Educational Assistance Authority for need-based student financial aid in accordance with G.S. 116B-7."

Session Laws 2002-126, s. 9.19(c), provides: "The Director of the Budget shall include General Fund appropriations in the amounts provided in subsection (b) of this section in the proposed 2003-2005 continuation budget for the purposes provided in G.S. 116B-7."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 9.19(a), effective July 1, 2002, substituted "grants and loans" for "loans" throughout the section, and added "of Chapter 116 of the General Statutes, policies of the Board of Governors of The University of North Carolina regarding need-based grants for students of The University of North Carolina, and policies of the State Board of Community Colleges regarding need-based grants for students of the community colleges" at the end of the last sentence.

ARTICLE 4.

North Carolina Unclaimed Property Act.

§ 116B-51. Short title.

OPINIONS OF ATTORNEY GENERAL

Insurance Statute Violations. — The Unclaimed Property Act may, depending on the circumstances, apply to monetary payments collected by the Commissioner of Insurance from regulated persons and businesses for failure to comply with insurance statutes. See opinion of Attorney General to Mr. Peter Kolbe, General Counsel, North Carolina Department of Insurance, 2000 N.C. AG LEXIS 31 (2/9/2000).

Chapter 116D.
Higher Education Bonds.

Article 1.
General Provisions.

§ 116D-1. Definitions.

Editor's Note. —

Session Laws 2000-3, s. 2, as amended by Session Laws 2001-424, s. 31.9, and by Session Laws 2002-126, s. 9.3, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and Session Laws 2000-3, s. 3 makes provisions for proceeds of Community College General Obligation Bonds. See Editor's Notes at G.S. 116D-6 and 116D-41.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 2.
General Obligation Bonds for Financing Capital Facilities for The University of North Carolina.

§ 116D-6. Short title.

Editor's Note. —

Session Laws 2000-3, s. 2(a), as amended by Session Laws 2001-424, s. 31.9, and by Session Laws 2002-126, s. 9.3, 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.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 116D-26. Issuance of special obligation bonds and bond anticipation notes.

Editor's Note. — Session Laws 2002-173, s. 5, provides: "Pursuant to G.S. 116D-26, 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 for the projects authorized by this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus six million dollars ($6,000,000) for related additional costs, such as issuance expenses, funding of reserve funds, and capitalized interest."

Chapter 117.
Electrification.

Article 2.
Electric Membership Corporations.

§ 117-18. Specific grant of powers.

CASE NOTES

Cited in City of New Bern v. Carteret-Craven Elec. Membership Corp., 356 N.C. 123, 567 S.E.2d 131, 2002 N.C. LEXIS 681 (2002).

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 6.

Contract Rights Regarding Tax Reimbursement.

Article 3.

Gasoline and Oil Inspection.

§ 119-26.2. (See editor's note for effective date) Sulfur content standards.

Editor's Note. — Session Laws 1999-328, section 2.2, as amended by Session Laws 2002-75, s. 1, provides: "Section 2.1 of this act becomes effective January 1, 2004.

Session Laws 2002-75, s. 2, provides: "Gasoline that meets the requirements of Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements as set out in 65 Federal Register No. 28 (10 February 2000) pages 6698 through 6870, as codified in 40 Code of Federal Regulations Parts 80, 85, and 96 (1 July 2001 Edition) , shall be deemed to comply with the requirements of G.S. 119-26.2."

Session Laws 2002-75, s. 3, provides that s. 2 of the act is effective August 15, 2002, and expires January 1, 2006.

Article 6.

Contract Rights Regarding Tax Reimbursement.

§ 119-65. Timing of reimbursement payments under contract.

(a) Right. — When a contract calls for one party to reimburse a second party for the federal manufacturer's excise taxes levied on petroleum products in Part III of Subchapter A of Chapter 32 of the Internal Revenue Code, whether as a separate item or as part of the price, the party making the reimbursement has the right to choose to tender payment for the taxes no more than one business day before the day the second party is required to remit the taxes to the federal Internal Revenue Service. The party making the reimbursement has the option of exercising this right. Exercise of this right does not relieve the party of the obligation to make the reimbursement as provided for in the contract, but affects only the timing of when that reimbursement must be tendered.

(b) Procedure. — In order to exercise the contractual right established in subsection (a) of this section, the party making the reimbursement must notify the second party in writing of the intent to exercise the payment option and the effective date of the exercise. The effective date must be no earlier than the beginning of the next federal tax quarter or 30 days after the notice of intent is received, whichever is later.

(c) Security. — If the party making the reimbursement exercises the contractual right provided in this section, the second party may require security for the payment of the taxes in proportion to the amount the taxes

represent compared to the security required on the contract as a whole. The second party may not, however, change the other payment terms of the contract without a valid business reason other than the exercise of the contractual right, except to require the payment of the taxes under the contractual right to be made by electronic funds transfer. (2002-108, s. 1.)

Editor's Note. — Session Laws 2002-108, s. 18(a), made this article, as enacted by s. 1 of the act, effective September 1, 2002, and applicable to contracts entered into or renewed on or after that date and to all continuing contracts that are in effect on that date and have no expiration date. Section 1 of the act does not apply to a contract in effect on September 1, 2002, that, by its terms, will terminate on a later date. Furthermore, s. 1 of the act does not impair the obligation arising under any contract executed before September 1, 2002.

Chapter 120.

General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

§ 120-1. Senators.

(a) For the purpose of nominating and electing members of the Senate in 2002 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts so that each District elects one Senator, and the composition of each district is as follows:

District 1: Camden County, Chowan County, Currituck County, Dare County, Hyde County, Pasquotank County, Perquimans County, Tyrrell County,

Carteret County: Precinct ATLANTIC BEACH, Precinct ATLANTIC, Precinct BETTIE, Precinct BEAUFORT 1, Precinct BEAUFORT 2, Precinct CEDAR ISLAND, Precinct DAVIS, Precinct HARKERS ISLAND, Precinct HARLOWE, Precinct MILL CREEK, Precinct MERRIMON, Precinct MOREHEAD 1, Precinct MOREHEAD 2, Precinct MOREHEAD 3, Precinct NEWPORT 1, Precinct NEWPORT 2, Precinct NORTH RIVER, Precinct SEALEVEL, Precinct STACY, Precinct WILDWOOD, Precinct WILLISTON, Precinct WIREGRASS, Precinct MARSHALLBERG, Precinct OTWAY STRAITS CRU, Precinct SMYRNA.

District 2: Bertie County, Gates County, Halifax County, Hertford County, Northampton County, Warren County, Vance County: Precinct MIDDLEBURG, Precinct TOWNSVILLE, Precinct WILLIAMSBORO.

District 3: Beaufort County, Craven County, Jones County, Pamlico County.

District 4: Onslow County, Carteret County: Precinct PINE KNOLL SHORES, Precinct BOGUE, Precinct BROAD CREEK, Precinct CEDAR POINT, Precinct EMERALD ISLE, Precinct INDIAN BEACH, Precinct MOREHEAD 4, Precinct PELETIER, Precinct SALTER PATH, Precinct STELLA, Precinct CAPE CARTERET.

District 5: Duplin County, Lenoir County, Sampson County.

District 6: Wake County: Precinct 01-19, Precinct 01-20, Precinct 01-22, Precinct 01-25, Precinct 01-26, Precinct 01-35, Precinct 01-40, Precinct 09-01, Precinct 09-02, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 13-02: Tract 540.09: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2079, Block 2080, Block 2081, Block 2999; Tract 540.10: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1048, Block 1049, Block 1051, Block 1054, Block 1055, Block 1058, Block 1059; Tract 542.01: Block Group 5: Block 5999; Precinct 13-03: Tract 540.09: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2100; Precinct 15-01, Precinct 16-01, Precinct 16-03, Precinct 16-04, Precinct 16-05, Precinct 16-07, Precinct 17-02, Precinct 17-03, Precinct 17-04, Precinct 17-06, Precinct 17-07, Precinct 19-01, Precinct 19-02, Precinct 19-03, Precinct 19-04, Precinct 19-07, Precinct 19-08.

District 7: New Hanover County.

District 8: Greene County, Wayne County, Pitt County: Precinct 6.01, Precinct 10.01, Precinct 13.01, Precinct 2.00A, Precinct 2.00B, Precinct 11.02B.

District 9: Edgecombe County, Martin County, Washington County, Nash County: Precinct ROCKY MOUNT 1, Precinct ROCKY MOUNT 2, Precinct ROCKY MOUNT 3, Precinct ROCKY MOUNT 4; Pitt County: Precinct 3.01, Precinct 4.01, Precinct 5.01, Precinct 11.01, Precinct 12.01, Precinct 15.01, Precinct 15.03, Precinct 15.04, Precinct 15.06, Precinct 15.05A, Precinct 15.05B, Precinct 15.07A: Tract 1: Block Group 3: Block 3049, Block 3068, Block 3069; Tract 4: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018; Precinct 15.11B.

District 10: Wilson County, Nash County: Precinct ROCKY MOUNT 5, Precinct ROCKY MOUNT 7, Precinct ROCKY MOUNT 9, Precinct NASHVILLE, Precinct OAK LEVEL; Pitt County: Precinct 1.01, Precinct 7.01, Precinct 9.01, Precinct 14.02, Precinct 15.09, Precinct 8.00A, Precinct 8.00B, Precinct 11.02A, Precinct 14.03A, Precinct 14.03B, Precinct 15.07A: Tract 2: Block Group 2: Block 2013, Block 2014, Block 2015, Block 2016; Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3021, Block 3022, Block 3023, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032; Precinct 15.07B, Precinct 15.07C, Precinct 15.08A, Precinct 15.08B, Precinct 15.10A, Precinct 15.10B, Precinct 15.11A, Precinct 15.12A, Precinct 15.12B.

District 11: Franklin County, Johnston County: Precinct BENTONVILLE, Precinct NORTH BEULAH, Precinct SOUTH BEULAH, Precinct NORTH BOON HILL, Precinct SOUTH BOON HILL, Precinct EAST INGRAMS, Precinct WEST INGRAMS, Precinct MICRO, Precinct NORTH O'NEALS, Precinct SOUTH O'NEALS, Precinct PINE LEVEL, Precinct EAST SELMA, Precinct WEST SELMA, Precinct EAST SMITHFIELD, Precinct NORTH SMITHFIELD, Precinct SOUTH SMITHFIELD, Precinct WILSON'S MILLS; Nash County: Precinct STONY CREEK, Precinct ROCKY MOUNT 6, Precinct ROCKY MOUNT 8, Precinct ROCKY MOUNT 10, Precinct GRIFFINS, Precinct JACKSONS, Precinct MANNINGS 1, Precinct MANNINGS 2, Precinct SOUTH WHITAKERS, Precinct BAILEY, Precinct CASTALIA, Precinct COOPERS, Precinct DRYWELLS, Precinct FERRELLS, Precinct NORTH WHITAKERS 1, Precinct NORTH WHITAKERS 2, Precinct RED OAK.

District 12: Durham County: Precinct 1, Precinct 2, Precinct 3, Precinct 4, Precinct 5, Precinct 6, Precinct 7, Precinct 8, Precinct 9, Precinct 16, Precinct 20, Precinct 21, Precinct 24, Precinct 25, Precinct 26, Precinct 27, Precinct 28, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 35, Precinct 36, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 43, Precinct 44, Precinct 45, Precinct 46, Precinct 48, Precinct 50, Precinct 51, Precinct 53, Precinct 54.

District 13: Granville County, Durham County: Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 17, Precinct 18, Precinct 19, Precinct 22, Precinct 23, Precinct 29, Precinct 34, Precinct 41, Precinct 42, Precinct 47, Precinct 49, Precinct 52; Vance County: Precinct EAST HENDERSON 1, Precinct EAST HENDERSON 2, Precinct NORTH HENDERSON 1, Precinct NORTH HENDERSON 2, Precinct SOUTH HENDERSON 1, Precinct SOUTH HENDERSON 2, Precinct WEST HENDERSON 1, Precinct WEST HENDERSON 2, Precinct DABNEY, Precinct HILLTOP, Precinct KITTRELL, Precinct SANDY SCREEK, Precinct WATKINS.

District 14: Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-14, Precinct 01-21, Precinct 01-23,

Precinct 01-27, Precinct 01-31, Precinct 01-32, Precinct 01-41, Precinct 01-48, Precinct 01-49, Precinct 04-01, Precinct 04-02, Precinct 04-03, Precinct 04-04, Precinct 04-05, Precinct 04-06, Precinct 04-08, Precinct 04-09: Tract 535.07: Block Group 1: Block 1000, Block 1001, Block 1002; Block Group 4: Block 4000; Tract 535.10: Block Group 1: Block 1020, Block 1023, Block 1024, Block 1032, Block 1033; Tract 535.13: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023; Tract 535.14: Block Group 1: Block 1076, Block 1077, Block 1078; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2006, Block 2026, Block 2027, Block 2030, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2997, Block 2998; Tract 535.15: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033; Precinct 04-10, Precinct 04-11, Precinct 04-12, Precinct 04-13, Precinct 04-14, Precinct 04-15, Precinct 04-16, Precinct 04-17, Precinct 04-18, Precinct 04-19, Precinct 07-10, Precinct 16-02, Precinct 16-06, Precinct 18-01, Precinct 18-06, Precinct 20-01: Tract 534.03: Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5020, Block 5021; Tract 534.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1080, Block 1081, Block 1082, Block 1112, Block 1113; Block Group 2: Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2139, Block 2140; Precinct 20-03, Precinct 20-06: Tract 534.03: Block Group 1: Block 1043; Block Group 4: Block 4074, Block 4075, Block 4076, Block 4104, Block 4105, Block 4106, Block 4107, Block 4108, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4121, Block 4122, Block 4123, Block 4124, Block 4125, Block 4126, Block 4127, Block 4128, Block 4129, Block 4130, Block 4131, Block 4132, Block 4133, Block 4134, Block 4135, Block 4136, Block 4137, Block 4138, Block 4139, Block 4140, Block 4141, Block 4142, Block 4143, Block 4144, Block 4145, Block 4146, Block 4149, Block 4150; Block Group 5: Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038; Tract 534.04: Block Group 1: Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block

1059, Block 1060, Block 1061, Block 1062, Block 1108, Block 1109, Block 1110, Block 1111.

District 15: Harnett County, Johnston County: Precinct NORTH BANNER, Precinct SOUTH BANNER, Precinct WEST BANNER, Precinct EAST CLAYTON, Precinct NORTH CLAYTON, Precinct WEST CLAYTON, Precinct NORTH CLEVELAND, Precinct NORTH ELEVATION, Precinct SOUTH ELEVATION, Precinct NORTH MEADOW, Precinct SOUTH MEADOW, Precinct PLEASANT GROVE, Precinct WILDERS, Precinct SOUTH CLEVELAND, Precinct SOUTH CLAYTON.

District 16: Orange County, Person County.

District 17: Anson County, Richmond County, Scotland County, Stanly County.

District 18: Brunswick County, Columbus County, Pender County.

District 19: Alamance County, Caswell County.

District 20: Forsyth County: Precinct 071, Precinct 072, Precinct 074, Precinct 123, Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 301, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 505, Precinct 601, Precinct 603, Precinct 604, Precinct 605, Precinct 606, Precinct 607, Precinct 701, Precinct 702, Precinct 703, Precinct 704, Precinct 705: Tract 21: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Block Group 3: Block 3002, Block 3003; Tract 22: Block Group 5: Block 5026, Block 5027, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041; Tract 38.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1030, Block 1050; Tract 38.04: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct 706, Precinct 707, Precinct 801, Precinct 803, Precinct 806, Precinct 807, Precinct 808, Precinct 901, Precinct 902, Precinct 903, Precinct 904, Precinct 905, Precinct 906, Precinct 907, Precinct 908, Precinct 909.

District 21: Chatham County, Lee County, Montgomery County, Moore County: Precinct CAMERON, Precinct EAST ABERDEEN, Precinct LITTLE RIVER, Precinct NORTH SOUTHERN PINES, Precinct PINEBLUFF, Precinct PINEDENE, Precinct SEVEN LAKES, Precinct SOUTH SOUTHERN PINES, Precinct TAYLORTOWN, Precinct VASS, Precinct WEST ABERDEEN, Precinct WEST END.

District 22: Cabarrus County, Mecklenburg County: Precinct 127, Precinct 240, Precinct 242, Precinct 133, Precinct 142, Precinct 143: Tract 62.06: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1037, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054; Precinct 202, Precinct 206, Precinct 207, Precinct 208.

District 23: Davidson County, Guilford County: Precinct High Point 13, Precinct High Point 14, Precinct High Point 15, Precinct High Point 16, Precinct High Point 23, Precinct High Point 24, Precinct High Point 25, Precinct High Point 26, Precinct High Point 27.

District 24: Bladen County, Cumberland County: Precinct CROSS CREEK 2, Precinct CROSS CREEK 7, Precinct CROSS CREEK 8, Precinct CUMBERLAND 1, Precinct CUMBERLAND 2, Precinct CUMBERLAND 3, Precinct HOPE MILLS 1, Precinct HOPE MILLS 2, Precinct HOPE MILLS 3,

Precinct PEARCES MILL 2, Precinct PEARCES MILL 3, Precinct PEARCES MILL 4, Precinct ALDERMAN, Precinct ARRAN HILLS, Precinct BEAVER DAM, Precinct CROSS CREEK 10, Precinct CROSS CREEK 11, Precinct CROSS CREEK 12, Precinct CROSS CREEK 14, Precinct CROSS CREEK 15, Precinct CROSS CREEK 18, Precinct CROSS CREEK 20, Precinct CROSS CREEK 24, Precinct CROSS CREEK 26, Precinct CROSS CREEK 27, Precinct CROSS CREEK 29, Precinct CROSS CREEK 30, Precinct CROSS CREEK 31, Precinct CROSS CREEK 34, Precinct CEDAR CREEK, Precinct EASTOVER, Precinct JUDSON/VANDER, Precinct SHERWOOD, Precinct STEDMAN, Precinct WADE.

District 25: Gaston County: Precinct York Chester, Precinct Victory, Precinct Pleasant Ridge, Precinct Forest Heights, Precinct Health Center, Precinct Myrtle, Precinct Highland, Precinct Wood Hill, Precinct Grier, Precinct Sherwood, Precinct Armstrong, Precinct Flint Grove, Precinct Ranlo, Precinct Gardner Park, Precinct Robinson 1, Precinct Gaston Day, Precinct Robinson 2, Precinct Ashbrook, Precinct South Gastonia, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Crowders Mountain, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Southpoint, Precinct Cramerton, Precinct New Hope, Precinct McAdenville, Precinct Union, Precinct Lowell, Precinct Tryon, Precinct Landers Chapel, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3, Precinct High Shoals, Precinct Dallas 1, Precinct Dallas 2.

District 26: Randolph County, Moore County: Precinct BENSALEM, Precinct CARTHAGE, Precinct EUREKA, Precinct EASTWOOD, Precinct KNOLLWOOD, Precinct ROBBINS, Precinct WEST MOORE, Precinct PINEHURST A, Precinct PINEHURST B, Precinct PINEHURST C, Precinct D-H-R.

District 27: Alexander County, Wilkes County, Catawba County: Precinct Brookford, Precinct College Park, Precinct Kenworth, Precinct Greenmont, Precinct Oakwood, Precinct Ridgeview, Precinct Highlands, Precinct Longview North, Precinct Longview South, Precinct Oakland Heights, Precinct Oxford, Precinct St Stephens 1, Precinct St Stephens 2, Precinct Sandy Ridge, Precinct Springs, Precinct Viewmont 1, Precinct Viewmont 2, Precinct Falling Creek, Precinct Northwest.

District 28: Buncombe County: Precinct Asheville 1, Precinct Asheville 2, Precinct Asheville 3, Precinct Asheville 4, Precinct Asheville 5, Precinct Asheville 6, Precinct Asheville 7, Precinct Asheville 8, Precinct Asheville 9, Precinct Asheville 10, Precinct Asheville 11, Precinct Asheville 12, Precinct Asheville 13, Precinct Asheville 14, Precinct Asheville 15, Precinct Asheville 16, Precinct Asheville 17, Precinct Asheville 20, Precinct Asheville 21, Precinct Asheville 22, Precinct Asheville 23, Precinct Asheville 24, Precinct Asheville 25, Precinct Averys Creek (30),Precinct Black Mountain 1 (32),Precinct Black Mountain 2 (33),Precinct Black Mountain 3 (34),Precinct Black Mountain 5 (36),Precinct Flat Creek (40), Precinct French Broad (41), Precinct Hazel 1 (42),Precinct Hazel 2 (43), Precinct Lower Hominy 1 (44), Precinct Lower Hominy 2 (45), Precinct Lower Hominy 3 (46), Precinct Upper Hominy 2 (48),Precinct Leicester 1 (52), Precinct North Buncombe (58),Precinct Reems Creek (59), Precinct Swannanoa 1 (64), Precinct Weaverville (67), Precinct West Buncombe 1 (68, 681), Precinct West Buncombe 2 (69), Precinct Woodfin (70), Precinct Woodland Hills (71), Precinct Asheville 28, Precinct Asheville 27, Precinct Black Mountain 4 (35), Precinct Upper Hominy CRU (47, 49), Precinct Ivy CRU (50, 51), Precinct Leicester Sandy Mush CRU (63, 53), Precinct Riceville Swannanoa CRU 2 (62, 66), Precinct Riceville Swannanoa 2 CRU (61, 65).

District 29: Cherokee County, Clay County, Graham County, Haywood County, Madison County, Swain County, Jackson County: Precinct Barkers

Creek, Precinct Canada, Precinct Caney Fork, Precinct Cullowhee, Precinct Dillsboro, Precinct Greens Creek, Precinct Hamburg, Precinct Mountain, Precinct Qualla, Precinct River, Precinct Savannah, Precinct Sylva North Ward, Precinct Sylva South Ward, Precinct Webster, Precinct Scotts Creek CRU.

District 30: Hoke County, Robeson County.

District 31: Guilford County: Precinct HP, Precinct Friendship 2, Precinct Greensboro 3, Precinct Greensboro 4, Precinct Greensboro 5, Precinct Greensboro 6, Precinct Greensboro 46, Precinct Greensboro 52, Precinct Greensboro 53, Precinct Greensboro 55, Precinct Greensboro 57, Precinct Greensboro 64, Precinct Greensboro 67, Precinct Greensboro 68, Precinct Greensboro 69, Precinct Greensboro 70, Precinct Greensboro 71, Precinct Greensboro 72, Precinct Greensboro 73, Precinct Greensboro 74, Precinct Greensboro 75, Precinct High Point 1, Precinct High Point 2, Precinct High Point 3, Precinct High Point 4, Precinct High Point 5, Precinct High Point 6, Precinct High Point 7, Precinct High Point 8, Precinct High Point 9, Precinct High Point 10, Precinct High Point 11, Precinct High Point 12, Precinct High Point 17, Precinct High Point 18, Precinct High Point 19, Precinct High Point 20, Precinct High Point 21, Precinct High Point 22, Precinct Pleasant Garden 1, Precinct Rock Creek 1, Precinct Fentress 1, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3, Precinct Jefferson 1, Precinct Jefferson 2, Precinct Jefferson 3, Precinct Monroe 3, Precinct North Madison, Precinct South Madison, Precinct Sumner 1, Precinct Sumner 2,

District 32: Guilford County: Precinct Center Grove 2, Precinct Center Grove 3, Precinct Friendship 1, Precinct Greensboro 1, Precinct Greensboro 2, Precinct Greensboro 7, Precinct Greensboro 9, Precinct Greensboro 10, Precinct Greensboro 11, Precinct Greensboro 12, Precinct Greensboro 13, Precinct Greensboro 14, Precinct Greensboro 15, Precinct Greensboro 16, Precinct Greensboro 17, Precinct Greensboro 18, Precinct Greensboro 19, Precinct Greensboro 20, Precinct Greensboro 21, Precinct Greensboro 22, Precinct Greensboro 23, Precinct Greensboro 24, Precinct Greensboro 25, Precinct Greensboro 26, Precinct Greensboro 27, Precinct Greensboro 28, Precinct Greensboro 29, Precinct Greensboro 30, Precinct Greensboro 31, Precinct Greensboro 32, Precinct Greensboro 33, Precinct Greensboro 34, Precinct Greensboro 35, Precinct Greensboro 36, Precinct Greensboro 37, Precinct Greensboro 38, Precinct Greensboro 39: Tract 125.06: Block Group 3: Block 3007; Tract 161.01: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Precinct Greensboro 41, Precinct Greensboro 42, Precinct Greensboro 43, Precinct Greensboro 44, Precinct Greensboro 45, Precinct Greensboro 47, Precinct Greensboro 48, Precinct Greensboro 49, Precinct Greensboro 50, Precinct Greensboro 51, Precinct Greensboro 54, Precinct Greensboro 56, Precinct Greensboro 58, Precinct Greensboro 59, Precinct Greensboro 60, Precinct Greensboro 61, Precinct Greensboro 62, Precinct Greensboro 63, Precinct Greensboro 65, Precinct Greensboro 66, Precinct Greensboro 8, Precinct Monroe 1, Precinct Monroe 2.

District 33: Mecklenburg County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 027, Precinct 030, Precinct 031, Precinct 037, Precinct 041, Precinct 042, Precinct 050, Precinct 052, Precinct 054, Precinct 055, Precinct 056, Precinct 058, Precinct 059, Precinct 076, Precinct 077, Precinct 082, Precinct 087, Precinct 097, Precinct 098, Precinct 114, Precinct 120, Precinct 128, Precinct 225, Precinct 238, Precinct 129, Precinct 135, Precinct 210, Precinct 211, Precinct 213, Precinct 214.

District 34: Mecklenburg County: Precinct 003, Precinct 026, Precinct 039, Precinct 040, Precinct 053, Precinct 060, Precinct 078, Precinct 079, Precinct 080, Precinct 081, Precinct 089, Precinct 104, Precinct 105, Precinct 107,

Precinct 122, Precinct 123, Precinct 126, Precinct 228, Precinct 229, Precinct 230, Precinct 237, Precinct 239, Precinct 241, Precinct 243, Precinct 132, Precinct 134, Precinct 138, Precinct 141, Precinct 143: Tract 62.06: Block Group 1: Block 1016, Block 1021, Block 1022, Block 1036, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045; Tract 62.07: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1998, Block 1999; Block Group 2: Block 2013, Block 2014; Precinct 200, Precinct 204, Precinct 209, Precinct 212, Precinct 222, Precinct 223, Precinct 224.

District 35: Mecklenburg County: Precinct 001, Precinct 008, Precinct 018, Precinct 019, Precinct 032, Precinct 036, Precinct 047, Precinct 048, Precinct 057, Precinct 065, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 085, Precinct 086, Precinct 088, Precinct 090, Precinct 091, Precinct 092, Precinct 093, Precinct 096, Precinct 100, Precinct 101, Precinct 103, Precinct 110, Precinct 111, Precinct 112, Precinct 113, Precinct 118, Precinct 119, Precinct 121, Precinct 226, Precinct 227, Precinct 231, Precinct 232, Precinct 233, Precinct 131, Precinct 136, Precinct 137, Precinct 139, Precinct 140, Precinct 144, Precinct 215, Precinct 217.

District 36: Wake County: Precinct 01-42, Precinct 01-47, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 03-00, Precinct 04-07, Precinct 04-09: Tract 535.14: Block Group 2: Block 2025; Precinct 05-00, Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 08-03, Precinct 08-04, Precinct 08-05, Precinct 08-08, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-06, Precinct 14-01, Precinct 14-02, Precinct 15-02, Precinct 18-02, Precinct 18-03, Precinct 18-04, Precinct 18-05, Precinct 18-08, Precinct 19-05, Precinct 19-06, Precinct 20-01: Tract 534.02: Block Group 2: Block 2031, Block 2032, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048; Tract 534.03: Block Group 4: Block 4016, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4031, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4079, Block 4082, Block 4083, Block 4084, Block 4085, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4093, Block 4094, Block 4095, Block 4097, Block 4098, Block 4099, Block 4100, Block 4101, Block 4102, Block 4103, Block 4999; Block Group 5: Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019; Precinct 20-02, Precinct 20-04, Precinct 20-05, Precinct 20-06: Tract 534.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1077, Block 1078, Block 1079, Block 1080; Block Group 2: Block 2053, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072; Block Group 4: Block 4012, Block 4013, Block 4014, Block 4015, Block 4017, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4077, Block 4078, Block 4080, Block 4081, Block 4147, Block 4148; Precinct 20-10.

District 37: Cleveland County, Rutherford County.

District 38: Davie County, Rowan County.

District 39: Lincoln County, Catawba County: Precinct Balls Creek, Precinct Banoak, Precinct Blackburn, Precinct Catawba, Precinct Claremont, Precinct Conover West, Precinct Conover East, Precinct East Maiden, Precinct East Newton, Precinct Maiden, Precinct Monogram, Precinct Mt Olive, Precinct Mtn View 1, Precinct Mtn View 2, Precinct North Newton, Precinct Sherrills Ford, Precinct South Newton, Precinct Startown, Precinct Sweetwater, Precinct West Newton, Precinct Lake Norman; Gaston County: Precinct Alexis, Precinct Lucia, Precinct Stanley 1, Precinct Stanley 2, Precinct Mt Holly 1, Precinct Mt Holly 2.

District 40: Mecklenburg County: Precinct 002, Precinct 004, Precinct 005, Precinct 006, Precinct 007, Precinct 009, Precinct 010, Precinct 015, Precinct 017, Precinct 020, Precinct 021, Precinct 028, Precinct 029, Precinct 033, Precinct 034, Precinct 035, Precinct 038, Precinct 043, Precinct 044, Precinct 045, Precinct 046, Precinct 049, Precinct 051, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 066, Precinct 083, Precinct 084, Precinct 094, Precinct 095, Precinct 099, Precinct 102, Precinct 106, Precinct 108, Precinct 109, Precinct 115, Precinct 116, Precinct 117, Precinct 124, Precinct 125, Precinct 234, Precinct 235, Precinct 130.

District 41: Cumberland County: Precinct CROSS CREEK 1, Precinct CROSS CREEK 3, Precinct CROSS CREEK 4, Precinct CROSS CREEK 5, Precinct CROSS CREEK 6, Precinct CROSS CREEK 9, Precinct MORGANTON ROAD, Precinct AUMAN, Precinct BLACK RIVER, Precinct BRENTWOOD, Precinct CROSS CREEK 13, Precinct CROSS CREEK 16, Precinct CROSS CREEK 17, Precinct CROSS CREEK 19, Precinct CROSS CREEK 21, Precinct CROSS CREEK 22, Precinct CROSS CREEK 23, Precinct CROSS CREEK 25, Precinct CROSS CREEK 28, Precinct CROSS CREEK 32, Precinct CROSS CREEK 33, Precinct CLIFFDALE WEST, Precinct LINDEN, Precinct LONG HILL, Precinct LAKE RIM, Precinct MANCHESTER, Precinct MONTIBELLO, Precinct SPRING LAKE, Precinct STONEY POINT, Precinct WEST AREA.

District 42: Henderson County, Macon County, Polk County, Transylvania County, Jackson County: Precinct Cashiers.

District 43: Rockingham County, Guilford County: Precinct Greene, Precinct Center Grove 1, Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct Greensboro 39: Tract 125.06: Block Group 1: Block 1065, Block 1067; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005; Tract 161.01: Block Group 1: Block 1005, Block 1013, Block 1014, Block 1015, Block 1016; Precinct Gibsonville, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Pleasant Garden 2, Precinct Rock Creek 2, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Fentress 2, Precinct Greensboro 40A, Precinct Greensboro 40B, Precinct Jamestown 4, Precinct Jamestown 5, Precinct Jefferson 4, Precinct North Center Grove, Precinct North Deep River, Precinct South Deep River, Precinct Stokesdale, Precinct Sumner 3, Precinct Sumner 4, Precinct North Clay, Precinct North Washington, Precinct South Clay, Precinct South Washington.

District 44: Wake County: Precinct 01-03, Precinct 01-04, Precinct 01-09, Precinct 01-10, Precinct 01-11, Precinct 01-12, Precinct 01-13, Precinct 01-15, Precinct 01-16, Precinct 01-17, Precinct 01-18, Precinct 01-28, Precinct 01-29, Precinct 01-30, Precinct 01-33, Precinct 01-34, Precinct 01-36, Precinct 01-37, Precinct 01-38, Precinct 01-39, Precinct 01-43, Precinct 01-44, Precinct 01-45, Precinct 01-46, Precinct 01-51, Precinct 07-01, Precinct 07-02, Precinct 07-03, Precinct 07-04, Precinct 07-05, Precinct 07-06, Precinct 07-07, Precinct 07-09, Precinct 07-11, Precinct 07-12, Precinct 08-01, Precinct 08-02, Precinct 08-06,

Precinct 11-01, Precinct 11-02, Precinct 13-01, Precinct 13-02: Tract 540.10: Block Group 1: Block 1046, Block 1047, Block 1050, Block 1052, Block 1053, Block 1056, Block 1057, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2025, Block 2026, Block 2027, Block 2028; Precinct 13-03: Tract 540.09: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Block Group 2: Block 2099, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2128, Block 2129, Block 2130; Precinct 17-01, Precinct 17-05.

District 45: Alleghany County, Ashe County, Stokes County, Surry County, Watauga County: Precinct Bald Mtn, Precinct North Fork, Precinct Stony Fork.

District 46: Forsyth County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 021, Precinct 031, Precinct 032, Precinct 033, Precinct 034, Precinct 042, Precinct 043, Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 073, Precinct 075, Precinct 081, Precinct 082, Precinct 083, Precinct 091, Precinct 092, Precinct 101, Precinct 111, Precinct 112, Precinct 122, Precinct 131, Precinct 132, Precinct 133, Precinct 504, Precinct 506, Precinct 507, Precinct 602, Precinct 705: Tract 38.02: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1997, Block 1998, Block 1999; Block Group 3: Block 3000; Precinct 708, Precinct 709, Precinct 802, Precinct 804, Precinct 805, Precinct 809.

District 47: Avery County, Caldwell County, Mitchell County, Yancey County, Watauga County: Precinct Beaverdam, Precinct Blowing Rock, Precinct Blue Ridge, Precinct Boone1, Precinct Boone 2, Precinct Brushy Fork, Precinct Cove Creek, Precinct Elk, Precinct Laurel Creek, Precinct Meat Camp, Precinct Boone 3, Precinct New River 1, Precinct New River 2, Precinct New River 3, Precinct Shawneehaw, Precinct Watauga, Precinct Beech Mtn.

District 48: Burke County, McDowell County, Buncombe County: Precinct Asheville 18, Precinct Asheville 19, Precinct Biltmore (31),Precinct Broad River (37), Precinct Fairview 1 (38), Precinct Fairview 2 (39),Precinct Limestone 1 (54),Precinct Limestone 2 (55), Precinct Limestone 3 (56), Precinct Limestone 4 (57),Precinct Reynolds (60), Precinct Asheville 29.

District 49: Iredell County, Yadkin County.

District 50: Union County, Mecklenburg County: Precinct 236, Precinct 201, Precinct 203, Precinct 205, Precinct 216, Precinct 218, Precinct 219, Precinct 220, Precinct 221.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as they were legally defined and recognized in the 2000 United States Census. Boundaries are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of May 1, 2001,

to reflect precincts divided or renamed as outlined in subsection (c) of this section. However, in Robeson County PHILADEPLUS is, in fact, PHILADELPHUS, and in Vance County SANDY SCREEK is, in fact, SANDY CREEK. If the boundary line between Iredell and Mecklenburg Counties in the Redistricting Census 2000 TIGER Files conflicts with that provided by Section 1 of Session Law 1998-15 as amended, Section 1 of Session Law 1998-15 as amended prevails to the extent of conflict.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect precincts divided or renamed by county boards of elections after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in the following counties:

(1) Buncombe County: a. Precinct Asheville 4 in TIGER is shown as Precincts Asheville 4 and Asheville 28. b. Precinct Asheville 22 in TIGER is shown as Precincts Asheville 22 and Asheville 27. c. Precinct Asheville 19 in TIGER is shown as Precincts Asheville 19 and Asheville 29. d. Precinct Riceville Swannanoa 2 CRU in TIGER is shown as Precincts Riceville Swannanoa 2 CRU and Riceville Swannanoa CRU 2. e. Precinct Black Mountain 3 in TIGER is shown as Precincts Black Mountain 3 and Black Mountain 4.

(2) Cabarrus County: a. Precinct 0202 in TIGER is shown as Precincts 0202 and 0207. b. Precinct 1209 in TIGER is shown as Precincts 1209 and 1212.

(3) Caldwell County: Precinct Lovelady in TIGER is shown as Precincts Lovelady1 and Lovelady2.

(4) Chatham County: a. Precinct North Williams in TIGER is shown as Precincts North Williams and North Williams 2. b. Precinct East Williams in TIGER is shown as Precincts East Williams and East Williams 2.

(5) Craven County: Precinct Havelock in TIGER is shown as Precincts Havelock East and Havelock West.

(6) Franklin County: Precinct Harris in TIGER is shown as Precincts East Harris and West Harris.

(7) Guilford County: Precinct Greensboro 40 in TIGER is shown as Precincts Greensboro 40A and Greensboro 40B.

(8) Johnston County: Precinct East Clayton in TIGER is shown as Precincts East Clayton and South Clayton.

(9) Orange County: a. Precinct Frank Porter Graham in TIGER is renamed Precinct Damascus 1. b. Precinct Dogwood Acres in TIGER is shown as Precincts Dogwood Acres and Damascus 2.

(10) Rowan County: a. Precinct Bostian Crossroads in TIGER is shown as Precincts Bostian Crossroads and Rock Grove. b. Precinct Enochville in TIGER is shown as Precincts Enochville and West Enochville.

(11) Wake County: a. Precinct 01-32 in TIGER is shown as Precincts 01-32 and 01-49. b. Precinct 07-06 in TIGER is shown as Precincts 07-06 and 07-11. c. Precinct 10-01 in TIGER is shown as Precincts 10-01 and 10-04. d. Precinct 10-02 in TIGER is shown as Precincts 10-02 and 10-03. e. Precinct 01-43 in TIGER is shown as Precincts 01-43 and 01-51. f. Precinct 07-02 in TIGER is shown as Precincts 07-02 and 07-12. g. Precinct 08-04 in TIGER is shown as Precincts 08-04 and 08-08. h. Precinct 12-02 in TIGER is shown as Precincts 12-02 and 12-06. i. Precinct 18-03 in TIGER is shown as Precincts 18-03 and 18-08. j. Precinct 19-02 in TIGER is shown as Precincts 19-02 and 19-06. k. Precinct 19-03 in TIGER is shown as Precincts 19-03 and 19-07. l. Precinct 19-04 in TIGER is shown as Precincts 19-04 and

19-08. m. Precinct 20-04 in TIGER is shown as Precincts 20-04 and 20-10. n. Precinct 01-32 in TIGER is shown as Precincts 01-32 and 01-49.

(d) If any precinct boundary is changed, that change shall not change the boundary of a senatorial district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C.S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1; 1971, c. 1177; 1981, c. 821; 1982, Ex. Sess., c. 5; 1982, 2nd Ex. Sess., c. 2; 1984, Ex. Sess., c. 4, ss. 1-3; c. 5, ss. 1-4; 1991, c. 676, s. 1; 1991, Ex. Sess., c. 4, ss. 1, 2; 2001-458, ss. 1, 2; 2001-487, s. 121.5; 2002-1, Ex. Sess., s. 3.1.)

Editor's Note. —

Session Laws 2002-1 (Extra Session), s. 3.2, provides: "The plan adopted by Section 3.1 of this act is effective for the elections for the years 2002, 2004, 2006, 2008, and 2010 unless the United States Supreme Court reverses the decision holding unconstitutional G.S. 120-1 as it existed prior to the enactment of this act (or the decision is otherwise enjoined, made inoperable or ineffective),and in any such case the prior version of G.S. 120-1 is again effective."

Session Laws 2002-1 (Extra Session), s. 3.3, provides: "If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. Specifically, the provisions of this act adopting a districting plan for the House of Representatives are severable from the provisions of this act adopting a districting plan for the Senate."

District Plans for 2002 Elections. — Session Laws 2002-1 enacted a House Redistricting Plan ("Proposed House Plan - Sutton 5") and a Senate Redistricting Plan ("Proposed Senate Plan - Fewer Divided Counties"), which were created to correct constitutional deficiencies found by the North Carolina Supreme Court in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002), in Sutton House Plan 3 (enacted by Session Laws 2001-458) and in NC Senate Plan 1C (enacted by Session Laws 2001-459). The House and Senate Redistricting Plans were ratified on May 17, 2002, and became Session Laws 2002-1 on May 20, 2002.

Both of these plans, which were applicable to the 2002 General Election held on November 5, 2002, can be viewed in a variety of digital formats at the website for the North Carolina General Assembly: http://www.ncleg.net/GIS/Reistricting/Dist_Plans/Proposed/newplans.html

Effect of Amendments. — Session Laws 2002-1 (Extra Session), s. 3.1, effective May 20, 2002, rewrote subsection (a).

CASE NOTES

Constitutionality. — Because the General Assembly enacted its 2001 legislative redistricting plans (Session Laws 2001-458 and 2001-459) in violation of the whole county provisions of N.C. Const., Art. II, § 3(3) and 5(3), these plans are unconstitutional and are therefore void. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Use of both single-member and multi-member districts within the same redistricting plan violates the Equal Protection Clause of the State Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

§ 120-2. House apportionment specified.

(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 2002 and periodically thereafter; the State of North Carolina shall be divided into the following districts with each district electing one Representative:

District 1: Camden County, Currituck County, Pasquotank County, Gates County: Precinct DISTRICT 4, Precinct DISTRICT 5.

District 2: Chowan County, Dare County, Perquimans County, Tyrrell County, Gates County: Precinct DISTRICT 1, Precinct DISTRICT 2, Precinct DISTRICT 3.

District 3: Pamlico County, Craven County: Precinct TRENT WOODS, Precinct RHEMS: Tract 9604: Block Group 7: Block 7000, Block 7001, Block 7002, Block 7999; Precinct RIVER BEND, Precinct BRIDGETON, Precinct GRANTHAM, Precinct CROATAN: Tract 9610: Block Group 7: Block 7028; Tract 9611: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1037, Block 1038, Block 1039, Block 1040, Block 1997, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004; Precinct WEST HAVELOCK: Tract 9611: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1996; Block Group 2: Block 2029, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3998, Block 3999; Tract 9612: Block Group 1: Block 1012, Block 1013, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1995, Block 1996, Block 1997; Tract 9613: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1999; Block Group 4: Block 4001, Block 4023, Block 4024; Block Group 5: Block 5016; Precinct FAIRFIELD HARBOUR, Precinct BRICES CREEK, Precinct EAST HAVELOCK: Tract 9612: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019; Tract 9613: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029; Block Group 5: Block 5012, Block 5013, Block 5018,

Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059; Precinct GEORGE STREET: Tract 9604: Block Group 1: Block 1000, Block 1001, Block 1027, Block 1040, Block 1041, Block 1042, Block 1043, Block 1051, Block 1052, Block 1053, Block 1054, Block 1062, Block 1995, Block 1998, Block 1999; Tract 9609: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1994, Block 1995, Block 1996, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2003, Block 2004, Block 2005, Block 2012, Block 2013, Block 2014; Block Group 3: Block 3000, Block 3001, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3997, Block 3998, Block 3999; Precinct GROVER C FIELDS: Tract 9605: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4032; Tract 9606: Block Group 2: Block 2000, Block 2005, Block 2006; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3026, Block 3039, Block 3040, Block 3041; Block Group 4: Block 4013, Block 4014, Block 4018, Block 4019, Block 4020, Block 4021, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037; Tract 9607: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2023, Block 2024; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Precinct H J McDONALD: Tract 9606: Block Group 1: Block 1008, Block 1009, Block 1010; Precinct GLENBURNIE PARK: Tract 9605: Block Group 3: Block 3000, Block 3001, Block 3997, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4033, Block 4034, Block 4998, Block 4999; Tract 9606: Block Group 3: Block 3000; Tract 9608: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2012, Block 2017, Block 2018, Block 2019; Block Group 3: Block 3000; Precinct WEST NEW BERN: Tract 9604: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5017, Block 5018, Block 5019, Block 5020,

Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6012, Block 6013, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6995, Block 6999; Tract 9606: Block Group 1: Block 1007; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Tract 9607: Block Group 3: Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014.

District 4: Craven County: Precinct CLARKS: Tract 9603: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1998, Block 1999; Tract 9605: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1020, Block 1021, Block 1022, Block 1028, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 3: Block 3016, Block 3017, Block 3021, Block 3022, Block 3023, Block 3025, Block 3026, Block 3994, Block 3995, Block 3996; Precinct JASPER: Tract 9603: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1996, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2033, Block 2034, Block 2035, Block 2036; Precinct FORT BARNWELL, Precinct TRUITT, Precinct ERNUL, Precinct VANCEBORO, Precinct EPWORTH; Martin County: Precinct JAMESVILLE, Precinct WILLIAMS, Precinct BEARGRASS, Precinct CROSS ROADS, Precinct GRIFFINS, Precinct POPLAR POINT, Precinct WILLIAMSTON 1, Precinct WILLIAMSTON 2; Pitt County: Precinct 5.01, Precinct 6.01, Precinct 11.01, Precinct 12.01, Precinct 13.01, Precinct 14.02, Precinct 11.02A, Precinct 11.02B, Precinct 15.10B.

District 5: Bertie County, Hertford County, Northampton County.

District 6: Beaufort County, Hyde County, Washington County.

District 7: Halifax County: Precinct BUTTERWOOD, Precinct CONOCONNARA, Precinct HALIFAX, Precinct HOBGOOD, Precinct HOLLISTER, Precinct PALMYRA, Precinct ROSENEATH, Precinct ROANOKE RAPIDS 7, Precinct ROANOKE RAPIDS 8, Precinct ROANOKE RAPIDS 9, Precinct SCOTLAND NECK 1, Precinct SCOTLAND NECK 2, Precinct ENFIELD 1, Precinct ENFIELD 2, Precinct ENFIELD 3, Precinct LITTLETON 1, Precinct RINGWOOD, Precinct WELDON 1, Precinct WELDON 2, Precinct WELDON 3, Precinct FAUCETT; Nash County: Precinct ROCKY MOUNT 1, Precinct ROCKY MOUNT 2, Precinct ROCKY MOUNT 3, Precinct ROCKY MOUNT 4, Precinct ROCKY MOUNT 6, Precinct ROCKY MOUNT 10: Tract 106: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3021, Block 3022, Block 3025, Block 3026; Tract 107: Block Group 3: Block 3004, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3999; Precinct GRIFFINS, Precinct SOUTH WHITAKERS: Tract 106: Block Group 3: Block 3023, Block 3024, Block 3027; Tract 107: Block Group 2: Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046; Block

Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3034, Block 3035, Block 3998; Precinct NORTH WHITAKERS 1.

District 8: Greene County, Martin County: Precinct GOOSE NEST, Precinct HAMILTON, Precinct HASSELL, Precinct ROBERSONVILLE 1, Precinct ROBERSONVILLE 2; Pitt County: Precinct 1.01: Tract 16: Block Group 1: Block 1008, Block 1009; Tract 18: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Precinct 3.01, Precinct 4.01, Precinct 7.01: Tract 6: Block Group 4: Block 4012; Tract 17: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1996; Tract 19: Block Group 1: Block 1000, Block 1001, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1998, Block 1999; Block Group 2: Block 2000; Precinct 9.01, Precinct 15.01, Precinct 15.03, Precinct 15.04: Tract 6: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3011, Block 3012, Block 3013, Block 3014, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3999; Block Group 4: Block 4005, Block 4006, Block 4010, Block 4011, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4048, Block 4059, Block 4060; Tract 7.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044; Tract 7.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Precinct 8.00A, Precinct 8.00B, Precinct 15.05A: Tract 6: Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3034, Block 3035, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Precinct 15.05B.

District 9: Pitt County: Precinct 1.01: Tract 6: Block Group 2: Block 2018, Block 2021; Tract 16: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1020; Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2049, Block 2050, Block 2054; Block Group 3: Block 3005, Block 3006; Tract 17: Block Group 1: Block 1023, Block 1024, Block

1025, Block 1026, Block 1027, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077; Precinct 7.01: Tract 6: Block Group 4: Block 4004; Tract 17: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1019, Block 1020, Block 1021, Block 1022, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1047, Block 1048, Block 1063, Block 1064, Block 1065, Block 1082, Block 1994, Block 1995, Block 1997, Block 1998; Precinct 10.01, Precinct 15.04: Tract 6: Block Group 3: Block 3015, Block 3025, Block 3032, Block 3036, Block 3037, Block 3038; Block Group 4: Block 4007, Block 4008, Block 4009, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067; Tract 16: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Tract 17: Block Group 1: Block 1043, Block 1044, Block 1045, Block 1046; Precinct 15.06, Precinct 15.09, Precinct 2.00A, Precinct 2.00B, Precinct 14.03A, Precinct 14.03B, Precinct 15.05A: Tract 6: Block Group 3: Block 3033; Precinct 15.07A, Precinct 15.07B, Precinct 15.07C, Precinct 15.08A, Precinct 15.08B, Precinct 15.10A, Precinct 15.11A, Precinct 15.11B, Precinct 15.12A, Precinct 15.12B.

District 10: Duplin County: Precinct ALBERTSON, Precinct BEULAVILLE, Precinct CYPRESS CREEK, Precinct CEDAR FORK, Precinct CHARITY, Precinct CHINQUAPIN, Precinct FAISON: Tract 9902: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3008, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036; Precinct GLISSON, Precinct HALLSVILLE, Precinct KENANSVILLE: Tract 9901: Block Group 2: Block 2049; Tract 9904: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2011, Block 2012, Block 2013, Block 2019; Precinct LOCKLIN, Precinct ROSE HILL, Precinct SMITH CABIN, Precinct WALLACE, Precinct WOLFSCRAPE; Lenoir County: Precinct INSTITUTE, Precinct NEUSE, Precinct WOODINGTON, Precinct FALLING CREEK, Precinct KINSTON 3: Tract 107: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3033, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046; Precinct KINSTON 4, Precinct KINSTON 9, Precinct MOSELEY HALL, Precinct TRENT 1, Precinct TRENT 2, Precinct PINK HILL 1, Precinct PINK HILL 2.

District 11: Wayne County: Precinct Precinct 1: Tract 1: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045,

Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060; Tract 2: Block Group 1: Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040; Precinct Precinct 2: Tract 2: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1027; Block Group 2: Block 2000, Block 2001; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040; Tract 3.01: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1052, Block 1053, Block 1054, Block 1055; Block Group 3: Block 3000, Block 3001, Block 3010, Block 3011, Block 3012; Precinct Precinct 6: Tract 3.01: Block Group 3: Block 3013, Block 3014, Block 3015, Block 3017; Tract 3.02: Block Group 1: Block 1001, Block 1002; Tract 13: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1044, Block 1045; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003; Precinct Precinct 7, Precinct Precinct 10: Tract 12: Block Group 1: Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1039, Block 1090, Block 1091; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Precinct Precinct 11: Tract 12: Block Group 1: Block 1001, Block 1002, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1065, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1082; Tract 18: Block Group 1: Block 1000; Tract 19: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1047, Block 1049, Block 1050; Block Group 2: Block 2001; Precinct Precinct 12, Precinct Precinct 13, Precinct Precinct 14, Precinct Precinct 15, Precinct Precinct 16, Precinct Precinct 17:

Tract 5: Block Group 1: Block 1003, Block 1004; Tract 13: Block Group 3: Block 3066, Block 3067; Precinct Precinct 18: Tract 14: Block Group 1: Block 1012, Block 1031; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009; Tract 19: Block Group 1: Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032; Block Group 3: Block 3010; Precinct Precinct 19: Tract 5: Block Group 1: Block 1002; Tract 14: Block Group 5: Block 5000, Block 5001; Precinct Precinct 20, Precinct Precinct 21, Precinct Precinct 22, Precinct Precinct 23, Precinct Precinct 24, Precinct Precinct 25, Precinct Precinct 26: Tract 6.01: Block Group 3: Block 3005, Block 3006, Block 3007, Block 3010, Block 3011, Block 3012; Tract 6.02: Block Group 1: Block 1014, Block 1016, Block 1017; Tract 9: Block Group 5: Block 5041, Block 5042, Block 5995; Block Group 7: Block 7004, Block 7005, Block 7006, Block 7007, Block 7018, Block 7019; Precinct Precinct 27: Tract 6.01: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1007, Block 1998; Precinct Precinct 28, Precinct Precinct 29, Precinct Precinct 30: Tract 7: Block Group 2: Block 2000, Block 2002, Block 2012; Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3022, Block 3023; Tract 8: Block Group 1: Block 1000, Block 1001; Block Group 3: Block 3026.

District 12: Jones County, Craven County: Precinct RHEMS: Tract 9604: Block Group 5: Block 5010, Block 5012, Block 5051, Block 5052, Block 5053, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068, Block 5069, Block 5070, Block 5071, Block 5072, Block 5075, Block 5076; Block Group 6: Block 6014, Block 6015, Block 6021, Block 6022, Block 6023; Block Group 7: Block 7048, Block 7049, Block 7051, Block 7052, Block 7053, Block 7054, Block 7992; Precinct CLARKS: Tract 9604: Block Group 5: Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5062; Tract 9605: Block Group 1: Block 1018, Block 1019, Block 1023, Block 1024, Block 1025, Block 1026; Precinct JASPER: Tract 9603: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2032, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055; Block Group 3: Block 3000, Block 3037; Block Group 4: Block 4053; Precinct COVE CITY, Precinct DOVER, Precinct CROATAN: Tract 9610: Block Group 7: Block 7007, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038, Block 7039, Block 7999; Tract 9611: Block Group 2: Block 2003, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2016, Block 2017, Block 2018, Block 2019, Block 2030, Block 2031; Precinct WEST HAVELOCK: Tract 9611: Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2032, Block 2033, Block 2055, Block 2056, Block 2057, Block 2058, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2997, Block 2998, Block 2999; Tract 9612: Block Group 1: Block 1000, Block 1001, Block 1020, Block 1021, Block 1032, Block 1033, Block 1992, Block 1993, Block 1998, Block 1999; Tract 9613: Block Group 5: Block 5015, Block 5017; Block Group 6: Block 6047, Block 6048, Block 6049, Block 6050; Precinct HARLOWE, Precinct EAST HAVELOCK: Tract 9613: Block Group 2: Block

2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3009, Block 3010, Block 3017, Block 3018; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5010, Block 5011, Block 5014, Block 5060, Block 5061, Block 5062, Block 5063; Precinct GEORGE STREET: Tract 9607: Block Group 1: Block 1000; Tract 9608: Block Group 3: Block 3023, Block 3024, Block 3025, Block 3026, Block 3051; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Block Group 6: Block 6000, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016; Tract 9609: Block Group 1: Block 1005, Block 1006, Block 1008, Block 1040, Block 1041, Block 1042; Block Group 2: Block 2001, Block 2002, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018; Precinct FORT TOTTEN, Precinct GROVER C FIELDS: Tract 9606: Block Group 3: Block 3024, Block 3025, Block 3027, Block 3028, Block 3029; Block Group 4: Block 4001, Block 4015, Block 4016, Block 4017; Precinct H J McDONALD: Tract 9605: Block Group 1: Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1027, Block 1029, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3018, Block 3019, Block 3020, Block 3024, Block 3027, Block 3028, Block 3029, Block 3030, Block 3993, Block 3998; Tract 9606: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Precinct GLENBURNIE PARK: Tract 9606: Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4022, Block 4023, Block 4024, Block 4025; Tract 9608: Block Group 2: Block 2010, Block 2011, Block 2013, Block 2014, Block 2015, Block 2016, Block 2020, Block 2021, Block 2022; Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3048; Block Group 6: Block 6001, Block 6002; Precinct WEST NEW BERN: Tract 9604: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Block Group 5: Block 5011, Block 5013, Block 5014, Block 5015, Block 5016, Block 5032, Block 5033, Block 5034, Block 5035; Lenoir County: Precinct CONTENTNEA, Precinct VANCE, Precinct KINSTON 1, Precinct KINSTON 2, Precinct KINSTON 3: Tract 106: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 4: Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026; Tract 107: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012,

Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2047, Block 2048, Block 2049, Block 2056, Block 2996; Block Group 3: Block 3031, Block 3032, Block 3034, Block 3035, Block 3036, Block 3037; Precinct KINSTON 5, Precinct KINSTON 6, Precinct KINSTON 7, Precinct KINSTON 8, Precinct SAND HILL, Precinct SOUTHWEST.

District 13: Carteret County, Onslow County: Precinct HUBERT: Tract 1.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016; Tract 1.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1036, Block 1998; Block Group 4: Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037; Tract 5: Block Group 1: Block 1000; Tract 25: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2999; Precinct MORTONS, Precinct SWANSBORO.

District 14: Onslow County: Precinct BRYNN MARR, Precinct EAST NORTHWOODS: Tract 17: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2022, Block 2023; Precinct JACKSONVILLE: Tract 5: Block Group 1: Block 1003, Block 1004, Block 1005; Tract 6: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1998, Block 1999; Tract 7: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1994, Block 1995, Block 1996, Block 1997, Block 1999; Tract 8: Block Group 1: Block 1003, Block 1004; Tract 9: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1993, Block 1994, Block 1998, Block 1999; Tract 10: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1004, Block 1997, Block 1998; Tract 11: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2996, Block 2998, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014; Tract 17: Block Group 2: Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2999; Tract 18: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036,

Block 1037, Block 1038, Block 1999; Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2039, Block 2040, Block 2041, Block 2042, Block 2996, Block 2997, Block 2998, Block 2999; Tract 19: Block Group 2: Block 2011, Block 2012; Tract 24: Block Group 4: Block 4995; Precinct NORTHEAST, Precinct NEW RIVER, Precinct Voting Districts not defined: Tract 6: Block Group 1: Block 1003, Block 1997; Tract 7: Block Group 1: Block 1998; Tract 9: Block Group 1: Block 1996, Block 1997.

District 15: Onslow County: Precinct BEAR CREEK, Precinct CATHERINES LAKE, Precinct CROSS ROADS, Precinct EAST NORTHWOODS: Tract 1.03: Block Group 1: Block 1050, Block 1051; Tract 13: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026; Tract 14: Block Group 1: Block 1007; Tract 15: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2009, Block 2010, Block 2011; Tract 17: Block Group 1: Block 1005; Precinct FOLKSTONE, Precinct GUM BRANCH, Precinct HALF MOON, Precinct HAWS RUN, Precinct HOLLY RIDGE, Precinct HUBERT: Tract 1.01: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008; Precinct JACKSONVILLE: Tract 18: Block Group 1: Block 1028; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2994; Precinct MILLS, Precinct NINE MILE, Precinct RICHLANDS, Precinct SNEADS FERRY, Precinct TAR LANDING, Precinct VERONA, Precinct WEST NORTHWOODS, Precinct Voting Districts not defined: Tract 0: Block Group 0: Block 0997, Block 0998; Tract 1.01: Block Group 3: Block 3995, Block 3996, Block 3997, Block 3998; Tract 1.03: Block Group 1: Block 1029, Block 1030, Block 1032, Block 1043, Block 1044, Block 1052; Block Group 2: Block 2011, Block 2012; Tract 2: Block Group 6: Block 6001, Block 6003, Block 6006, Block 6007, Block 6009; Tract 3: Block Group 3: Block 3026, Block 3027; Tract 4: Block Group 1: Block 1992, Block 1993, Block 1995, Block 1997, Block 1999; Block Group 2: Block 2020, Block 2997; Block Group 5: Block 5003, Block 5996, Block 5997, Block 5998; Tract 5: Block Group 1: Block 1001, Block 1002, Block 1006, Block 1007, Block 1008, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1024, Block 1987, Block 1988, Block 1989, Block 1991, Block 1992, Block 1993, Block 1994, Block 1995, Block 1996, Block 1997, Block 1998; Tract 9: Block Group 1: Block 1003, Block 1995; Tract 10: Block Group 1: Block 1003, Block 1999; Tract 18: Block Group 2: Block 2995.

District 16: Pender County, New Hanover County: Precinct HARNETT 4: Tract 119.01: Block Group 2: Block 2000; Block Group 3: Block 3010, Block

3011, Block 3012, Block 3013, Block 3014, Block 3015; Precinct HARNETT 5: Tract 116.01: Block Group 1: Block 1000, Block 1038, Block 1039, Block 1040, Block 1053; Tract 117.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1011, Block 1012, Block 1027; Block Group 2: Block 2000; Precinct HARNETT 6: Tract 116.01: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1041, Block 1042, Block 1043, Block 1044; Precinct HARNETT 7: Tract 116.04: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028, Block 2029, Block 2030, Block 2032, Block 2033, Block 2036, Block 2037; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3007, Block 3008, Block 3009, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065; Precinct WILMINGTON 13, Precinct WILMINGTON 17, Precinct WILMINGTON 22: Tract 105.02: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Precinct WILMINGTON 23, Precinct WILMINGTON 24, Precinct CAPE FEAR 2: Tract 115: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1059, Block 1992, Block 1993, Block 1994, Block 1997, Block 1998, Block 1999; Block Group 5: Block 5984, Block 5985; Tract 116.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1005, Block 1006, Block 1007, Block 1999; Tract 116.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005.

District 17: Brunswick County: Precinct FRYING PAN, Precinct GRISSETTOWN, Precinct TOWN CREEK, Precinct BELVILLE: Tract 201: Block Group 4: Block 4015, Block 4016, Block 4024, Block 4032, Block 4033, Block 4034, Block 4035; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5051, Block 5052, Block 5053; Block Group 6: Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6024, Block 6025, Block 6026, Block 6027; Tract 202: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block

1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1996, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2024, Block 2025, Block 2041, Block 2042, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3029, Block 3032, Block 3033, Block 3996, Block 3999; Precinct BOLIVIA, Precinct BOILING SPRING LAKES, Precinct LONGWOOD, Precinct MOSQUITO, Precinct OAK ISLAND 1, Precinct OAK ISLAND 2, Precinct OAK ISLAND 3, Precinct SOUTHPORT 1, Precinct SOUTHPORT 2, Precinct SHINGLETREE 1, Precinct SHINGLETREE 2, Precinct SUPPLY, Precinct WACCAMAW, Precinct SECESSION 1, Precinct SECESSION 2, Precinct SHALLOTTE.

District 18: Brunswick County: Precinct HOODS CREEK: Tract 201: Block Group 1: Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1996; Block Group 7: Block 7031, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038; Tract 206: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023; Precinct WOODBURN: Tract 201: Block Group 1: Block 1998; Block Group 3: Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3028, Block 3029, Block 3992, Block 3993, Block 3994, Block 3995, Block 3996; Precinct LELAND: Tract 201: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1051, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1995, Block 1997, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2018, Block 2019, Block 2023, Block 2024, Block 2025, Block 2026; Block Group 3: Block 3991; Block Group 7: Block 7000, Block 7010, Block 7014, Block 7015, Block 7016; Columbus County: Precinct BOLTON: Tract 9901: Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2055, Block 2056, Block 2057, Block 2058, Block 2065, Block 2066, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073; Block Group 3: Block 3019, Block 3021, Block 3022; Tract 9902: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009,

Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1098, Block 1100, Block 1101, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1134, Block 1135, Block 1142, Block 1144, Block 1290, Block 1291; Precinct RANSOM: Tract 9901: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2067, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3020, Block 3030, Block 3031, Block 3032, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073; Precinct SOUTH WHITEVILLE: Tract 9909: Block Group 1: Block 1000; Tract 9910: Block Group 1: Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1054; Precinct WACCAMAW: Tract 9903: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011,

Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1039, Block 1040, Block 1041, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1095, Block 1096, Block 1097, Block 1098, Block 1997, Block 1998, Block 1999; Tract 9904: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003; Block Group 2: Block 2000, Block 2003, Block 2004, Block 2007, Block 2008; Precinct WHITEVILLE 2, Precinct WEST WHITEVILLE: Tract 9908: Block Group 2: Block 2006; Precinct WESTERN PRONG, Precinct TATUM, Precinct WELCHES CREEK; New Hanover County: Precinct HARNETT 1, Precinct HARNETT 4: Tract 119.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Precinct HARNETT 5: Tract 116.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3040; Tract 117.01: Block Group 1: Block 1010; Tract119.01: Block Group 3: Block 3004; Precinct HARNETT 6: Tract116.01: Block Group 1: Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052; Precinct HARNETT 7: Tract 116.04: Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3034, Block 3043; Precinct WILMINGTON 1, Precinct WILMINGTON 2, Precinct WILMINGTON 3, Precinct WILMINGTON 4, Precinct WILMINGTON 6, Precinct WILMINGTON 7, Precinct WILMINGTON 8, Precinct WILMINGTON 9, Precinct WILMINGTON 10, Precinct WILMINGTON 15, Precinct WILMINGTON 19: Tract 109: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1019, Block 1020, Block 1021, Block 1022; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040; Precinct WILMINGTON 22: Tract 105.02: Block Group 1: Block 1010, Block 1011, Block 1012, Block 1013; Precinct CAPE FEAR 1, Precinct CAPE FEAR 2: Tract 115: Block Group 1: Block 1033, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047; Block Group 2: Block 2000, Block 2001, Block 2002; Tract 116.03: Block Group 1: Block 1003, Block 1004, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2001; Precinct CAPE FEAR 3.

District 19: New Hanover County: Precinct WRIGHTSVILLE BEACH, Precinct HARNETT 2, Precinct HARNETT 3, Precinct HARNETT 4: Tract 119.01: Block Group 1: Block 1017, Block 1018, Block 1019, Block 1024, Block 1025; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008; Block Group 4: Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013; Tract 119.02: Block Group 1: Block 1003, Block 1004, Block 1005; Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2015, Block 2016, Block 2017, Block 2018; Precinct HARNETT 5: Tract 117.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1013, Block 1014, Block 1015,

Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020; Precinct HARNETT 8, Precinct HARNETT 9, Precinct MASONBORO 2, Precinct MASONBORO 4, Precinct MASONBORO 5, Precinct WILMINGTON 16, Precinct WILMINGTON 18, Precinct FEDERAL POINT 1, Precinct FEDERAL POINT 2, Precinct FEDERAL POINT 3, Precinct FEDERAL POINT 4, Precinct FEDERAL POINT 5.

District 20: Brunswick County: Precinct HOODS CREEK: Tract 201: Block Group 7: Block 7020, Block 7021, Block 7022, Block 7030, Block 7039, Block 7040, Block 7041, Block 7042; Tract 206: Block Group 5: Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5070, Block 5071, Block 5072, Block 5073, Block 5074, Block 5075, Block 5076, Block 5088, Block 5089, Block 5090, Block 5091, Block 5092, Block 5093, Block 5094, Block 5095, Block 5096, Block 5099, Block 5100, Block 5194, Block 5195; Precinct WOODBURN: Tract 201: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3988, Block 3989, Block 3990, Block 3997, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4036, Block 4997, Block 4998, Block 4999; Precinct BELVILLE: Tract 202: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1998, Block 1999; Precinct LELAND: Tract 201: Block Group 1: Block 1049, Block 1050, Block 1052; Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2020, Block 2021, Block 2022; Block Group 3: Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034; Block Group 5: Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6008, Block 6009; Block Group 7: Block 7001, Block 7002, Block 7003, Block 7004, Block 7005, Block 7006, Block 7007, Block 7008, Block 7009, Block 7011, Block 7012, Block 7013, Block 7017, Block 7018, Block 7019, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029; Tract 206: Block Group 5: Block 5097, Block 5098; Columbus County: Precinct CERRO GORDO, Precinct FAIR BLUFF, Precinct BOLTON: Tract 9902: Block Group 1: Block 1097, Block 1099, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1136, Block 1137, Block 1138, Block 1139, Block 1140, Block 1141, Block 1143, Block 1145, Block 1146, Block 1147, Block 1148, Block 1149, Block 1150, Block 1151, Block 1152, Block 1153, Block 1154, Block 1155, Block 1156, Block 1157, Block 1158, Block 1159, Block 1160, Block 1161, Block 1162, Block 1163, Block 1164, Block 1165, Block 1166, Block 1167, Block 1168, Block 1169, Block 1227, Block 1228, Block 1229, Block 1230, Block 1231, Block 1232, Block 1233, Block 1234, Block 1235, Block 1236, Block 1237, Block 1238, Block 1239, Block 1244, Block 1245, Block 1246, Block 1247, Block 1248, Block 1249, Block 1250, Block 1251, Block 1252, Block 1253, Block 1254, Block 1255, Block 1256, Block 1257, Block 1258, Block

1259, Block 1260, Block 1261, Block 1262, Block 1263, Block 1264, Block 1265, Block 1266, Block 1267, Block 1276, Block 1277, Block 1278, Block 1279, Block 1280, Block 1281, Block 1282, Block 1283, Block 1284, Block 1285, Block 1286, Block 1287, Block 1288, Block 1289; Tract 9913: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1081, Block 1082, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1098, Block 1142, Block 1143, Block 1144, Block 1145, Block 1146, Block 1147, Block 1148, Block 1149, Block 1150, Block 1151; Precinct NORTH WHITEVILLE, Precinct RANSOM: Tract 9901: Block Group 3: Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089; Tract 9902: Block Group 1: Block 1132, Block 1133, Block 1170, Block 1171, Block 1172, Block 1173, Block 1174, Block 1175, Block 1176, Block 1177, Block 1178, Block 1179, Block 1180, Block 1181, Block 1182, Block 1183, Block 1184, Block 1185, Block 1186, Block 1187, Block 1188, Block 1189, Block 1190, Block 1191, Block 1192, Block 1193, Block 1194, Block 1195, Block 1196, Block 1197, Block 1198, Block 1199, Block 1200, Block 1201, Block 1202, Block 1203, Block 1204, Block 1205, Block 1206, Block 1207, Block 1208, Block 1209, Block 1210, Block 1211, Block 1212, Block 1213, Block 1214, Block 1215, Block 1216, Block 1217, Block 1218, Block 1219, Block 1220, Block 1221, Block 1222, Block 1223, Block 1224, Block 1225, Block 1226, Block 1240, Block 1241, Block 1242, Block 1243, Block 1268, Block 1269, Block 1270, Block 1271, Block 1272, Block 1273, Block 1274, Block 1275; Precinct SOUTH WHITEVILLE: Tract 9910: Block Group 1: Block 1000, Block 1013, Block 1014, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1051, Block 1052, Block 1053, Block 1056, Block 1057, Block 1058, Block 1999; Block Group 2: Block 2000, Block 2007, Block 2008, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2033, Block 2034, Block 2035, Block 2039; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3999; Precinct SOUTH WILLIAMS, Precinct WACCAMAW: Tract 9903: Block Group 2: Block 2000, Block 2001, Block 2024; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block

3022, Block 3023, Block 3024, Block 3999; Precinct WHITEVILLE 1, Precinct WILLIAMS 1, Precinct WILLIAMS2, Precinct WEST WHITEVILLE: Tract 9907: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1996, Block 1997, Block 1998, Block 1999; Tract 9908: Block Group 2: Block 2000, Block 2001, Block 2024, Block 2025; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3029; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016; Tract 9909: Block Group 3: Block 3007, Block 3008, Block 3022, Block 3023, Block 3024; Block Group 4: Block 4026; Block Group 5: Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5018, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5035, Block 5036, Block 5037, Block 5038, Block 5999; Precinct BUG HILL 1, Precinct BUG HILL 2, Precinct BUG HILL 3, Precinct CHADBOURN, Precinct CHERRY GROVE, Precinct BOGUE, Precinct EASTLEES, Precinct NORTH LEES, Precinct SOUTH LEES, Precinct WESTLEES; New Hanover County: Precinct MASONBORO 3, Precinct WILMINGTON 5, Precinct WILMINGTON 11, Precinct WILMINGTON 12, Precinct WILMINGTON 14, Precinct WILMINGTON 19: Tract 108: Block Group 1: Block 1017; Block Group 2: Block 2029, Block 2998, Block 2999; Tract 109: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2998, Block 2999; Precinct WILMINGTON 20, Precinct WILMINGTON 21.

District 21: Duplin County: Precinct CALYPSO, Precinct FAISON: Tract 9902: Block Group 1: Block 1012; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2999; Block Group 3: Block 3005, Block 3006, Block 3007, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3998; Precinct KENANSVILLE: Tract 9904: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038; Block Group 2: Block

2010, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4006, Block 4012, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4037, Block 4038, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4999; Precinct MAGNOLIA, Precinct ROCKFISH, Precinct WARSAW; Sampson County: Precinct CENTRAL CLINTON, Precinct EAST CLINTON: Tract 9707: Block Group 1: Block 1011, Block 1016, Block 1019, Block 1020, Block 1021, Block 1022, Block 1024, Block 1999; Block Group 2: Block 2000, Block 2999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4011, Block 4012, Block 4013, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037; Tract 9708: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1042; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2008, Block 2009, Block 2010, Block 2030; Block Group 5: Block 5000, Block 5019, Block 5021; Precinct NORTHEAST CLINTON, Precinct WEST CLINTON: Tract 9706: Block Group 2: Block 2020, Block 2021, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2032; Tract 9708: Block Group 2: Block 2017, Block 2034, Block 2035, Block 2036, Block 2037; Precinct GARLAND: Tract 9709: Block Group 2: Block 2014, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082; Block Group 3: Block 3001, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3052, Block 3999; Precinct GIDDENSVILLE: Tract 9701: Block Group 2: Block 2011; Block Group 3: Block

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Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3008, Block 3009; Tract 6.02: Block Group 2: Block 2027, Block 2997; Tract 9: Block Group 4: Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5997, Block 5998, Block 5999; Precinct Precinct 30: Tract 7: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039; Block Group 2: Block 2001, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048; Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3034, Block 3035, Block 3036; Tract 8: Block Group 3: Block 3025, Block 3027, Block 3048, Block 3049, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070.

District 22: Bladen County, Sampson County: Precinct AUTRYVILLE, Precinct EAST CLINTON: Tract 9701: Block Group 6: Block 6014, Block 6015, Block 6016, Block 6017; Tract 9707: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1017, Block 1018, Block 1023, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 5: Block 5010, Block 5011; Precinct CLEMENT, Precinct SOUTHWEST CLINTON, Precinct WEST CLINTON: Tract 9705: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1041; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016; Tract 9706: Block Group 1: Block 1021, Block 1022, Block 1023, Block 1047, Block 1048; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041; Tract 9708: Block Group 2: Block 2016; Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3999; Tract 9709: Block Group 1: Block 1000, Block 1012, Block 1013, Block 1014; Precinct GARLAND: Tract 9709: Block Group 1: Block 1020, Block 1032; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2015, Block 2039; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007; Precinct GIDDENSVILLE: Tract 9701: Block Group 4: Block 4011, Block 4012; Tract 9702: Block Group 1: Block 1031, Block 1032, Block 1033, Block 1034; Precinct HERRING, Precinct INGOLD: Tract 9708: Block Group 3: Block 3026,

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District 23: Edgecombe County: Precinct 1-1, Precinct 1-2, Precinct 1-3, Precinct 1-4, Precinct 2-1, Precinct 3-1, Precinct 4-1, Precinct 8-1, Precinct 9-1, Precinct 10-1, Precinct 11-1; Wilson County: Precinct BLACK CREEK, Precinct CROSSROADS, Precinct GARDNERS, Precinct OLD FIELDS, Precinct SARATOGA, Precinct SPRINGHILL, Precinct STANTONSBURG, Precinct TAYLORS, Precinct TOISNOT: Tract 13: Block Group 2: Block 2005, Block 2006; Block Group 4: Block 4004, Block 4005, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5024, Block 5025, Block 5028, Block 5030, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052; Precinct WILSON I, Precinct WILSON L, Precinct WILSON M, Precinct WILSON P.

District 24: Edgecombe County: Precinct 5-1, Precinct 6-1, Precinct 7-1, Precinct 12-1, Precinct 12-2, Precinct 12-3, Precinct 12-4, Precinct 12-5, Precinct 13-1, Precinct 14-1; Wilson County: Precinct TOISNOT: Tract 12: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008; Tract 13: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3048, Block 3049, Block 3050; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Block Group 5: Block 5022, Block 5023, Block

5026, Block 5027, Block 5029, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5053, Block 5054; Precinct WILSON A, Precinct WILSON B, Precinct WILSON C, Precinct WILSON D, Precinct WILSON E, Precinct WILSON F, Precinct WILSON G, Precinct WILSON H, Precinct WILSON J, Precinct WILSON K, Precinct WILSON N, Precinct WILSON Q.

District 25: Nash County: Precinct STONY CREEK, Precinct ROCKY MOUNT 5, Precinct ROCKY MOUNT 7, Precinct ROCKY MOUNT 8, Precinct ROCKY MOUNT 9, Precinct NASHVILLE, Precinct ROCKY MOUNT 10: Tract 106: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Block Group 3: Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3030, Block 3031, Block 3032, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052; Precinct JACKSONS, Precinct MANNINGS 1, Precinct MANNINGS 2, Precinct SOUTH WHITAKERS: Tract 106: Block Group 3: Block 3006, Block 3007, Block 3008; Tract 107: Block Group 2: Block 2018, Block 2047, Block 2048, Block 2049; Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3041; Tract 108: Block Group 4: Block 4000, Block 4001, Block 4008, Block 4009, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4032, Block 4033, Block 4034, Block 4039, Block 4997, Block 4999; Precinct BAILEY, Precinct CASTALIA, Precinct COOPERS, Precinct DRYWELLS, Precinct FERRELLS, Precinct NORTH WHITAKERS 2, Precinct OAK LEVEL, Precinct RED OAK.

District 26: Johnston County: Precinct NORTH BEULAH, Precinct SOUTH BEULAH, Precinct NORTH BOON HILL, Precinct SOUTH BOON HILL, Precinct EAST CLAYTON: Tract 409: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1048, Block 1051; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015; Tract 410: Block Group 4: Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4060, Block 4061; Precinct MICRO, Precinct NORTH O'NEALS, Precinct SOUTH O'NEALS, Precinct PINE LEVEL, Precinct EAST SELMA, Precinct WEST SELMA, Precinct WILDERS, Precinct WILSON'S MILLS, Precinct SOUTH CLAYTON: Tract 409: Block Group 1: Block 1034, Block 1035, Block 1036, Block 1043, Block 1999; Tract 410: Block Group 4: Block 4062, Block 4063, Block 4064, Block 4999; Block Group 5: Block 5025, Block 5026, Block 5034, Block 5035, Block 5062, Block 5063; Tract 411: Block Group 1: Block 1020, Block 1021, Block 1022, Block

1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2019, Block 2022, Block 2023, Block 2024, Block 2999; Wayne County: Precinct Precinct 1: Tract 1: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2999; Precinct Precinct 2: Tract 3.01: Block Group 1: Block 1006, Block 1007, Block 1020, Block 1051; Block Group 3: Block 3002, Block 3003, Block 3004; Block Group 4: Block 4000, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009; Precinct Precinct 3, Precinct Precinct 4, Precinct Precinct 5, Precinct Precinct 6: Tract 3.01: Block Group 3: Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3016, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027; Precinct Precinct 8: Tract 9: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1993; Tract 11: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2030, Block 2031, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045; Block Group 5: Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5996; Precinct Precinct 11: Tract 12: Block Group 1: Block 1000, Block 1003, Block 1004, Block 1005, Block 1064, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070; Tract 19: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006.

District 27: Granville County: Precinct ANTIOCH, Precinct BEREA, Precinct EAST OXFORD, Precinct OAK HILL, Precinct SALEM, Precinct SASSAFRAS FORK, Precinct SOUTH OXFORD, Precinct WEST OXFORD ELEMENTARY; Vance County: Precinct EAST HENDERSON 1, Precinct EAST HENDERSON 2, Precinct NORTH HENDERSON 1, Precinct NORTH HENDERSON 2, Precinct SOUTH HENDERSON 1, Precinct SOUTH HENDERSON 2, Precinct WEST HENDERSON 2, Precinct DABNEY, Precinct MIDDLEBURG, Precinct SANDY SCREEK, Precinct TOWNSVILLE, Precinct WILLIAMSBORO; Warren County: Precinct SIX POUND, Precinct HAWTREE, Precinct SMITH CREEK, Precinct NUTBUSH, Precinct SANDY CREEK, Precinct SHOCCO, Precinct WEST WARRETON, Precinct NORLINA, Precinct EAST WARRENTON.

District 28: Johnston County: Precinct NORTH BANNER, Precinct SOUTH BANNER, Precinct WEST BANNER, Precinct BENTONVILLE, Precinct EAST CLAYTON: Tract 410: Block Group 4: Block 4038; Precinct NORTH CLAYTON, Precinct WEST CLAYTON, Precinct NORTH CLEVELAND, Precinct NORTH ELEVATION, Precinct SOUTH ELEVATION, Precinct EAST INGRAMS, Precinct WEST INGRAMS, Precinct NORTH MEADOW, Precinct SOUTH MEADOW, Precinct PLEASANT GROVE, Precinct EAST SMITHFIELD, Precinct NORTH SMITHFIELD, Precinct SOUTH SMITHFIELD, Precinct SOUTH CLEVELAND, Precinct SOUTH CLAYTON:

Tract 410: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5049, Block 5059, Block 5060, Block 5061.

District 29: Durham County: Precinct 7: Tract 5: Block Group 1: Block 1015, Block 1016, Block 1018, Block 1019; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012; Tract 7: Block Group 1: Block 1004; Precinct 8, Precinct 9, Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 16, Precinct 17, Precinct 27, Precinct 36, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42, Precinct 48, Precinct 49, Precinct 51, Precinct 53.

District 30: Durham County: Precinct 1, Precinct 2, Precinct 3, Precinct 4, Precinct 5, Precinct 6, Precinct 7: Tract 3.02: Block Group 3: Block 3003, Block 3004, Block 3007, Block 3008, Block 3009, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3019, Block 3020; Tract 5: Block Group 1: Block 1000, Block 1011, Block 1012, Block 1013, Block 1014; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003; Tract 7: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1009, Block 1010; Tract 8.01: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Tract 8.02: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050; Precinct 21, Precinct 22: Tract 17.09: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3011, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Precinct 23, Precinct 24, Precinct 37, Precinct 43, Precinct 45, Precinct 46, Precinct 50.

District 31: Durham County: Precinct 14, Precinct 15, Precinct 18, Precinct 19, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 35, Precinct 47, Precinct 52, Precinct 54.

District 32: Durham County: Precinct 20, Precinct 22: Tract 1.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1020, Block 1021, Block 1022, Block 1023, Block 1027, Block 1030, Block 1031, Block 1032; Block Group 2: Block 2000, Block 2002, Block 2003, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026; Tract 1.02: Block Group 1: Block 1000; Tract 17.09: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1009, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Tract 18.01: Block Group 3: Block 3030, Block 3031, Block 3036, Block 3037, Block 3038, Block 3039; Precinct 25, Precinct 26, Precinct 28, Precinct 29, Precinct 44; Granville County: Precinct BRASSFIELD, Precinct BUTNER, Precinct CORINTH, Precinct CREDLE, Precinct CREEDMOOR, Precinct TALLY HO; Vance County: Precinct WEST HENDERSON 1, Precinct HILLTOP, Precinct KITTRELL, Precinct WATKINS.

District 33: Wake County: Precinct 01-18, Precinct 01-19, Precinct 01-20, Precinct 01-22, Precinct 01-26, Precinct 01-34, Precinct 01-38, Precinct 01-40, Precinct 13-01, Precinct 17-01, Precinct 17-03, Precinct 17-05, Precinct 17-07.

District 34: Wake County: Precinct 01-04, Precinct 01-10, Precinct 01-11, Precinct 01-12, Precinct 01-13, Precinct 01-15, Precinct 01-16, Precinct 01-17, Precinct 01-28, Precinct 01-29, Precinct 01-30, Precinct 01-33, Precinct 01-36, Precinct 01-37, Precinct 01-39, Precinct 01-43, Precinct 01-44, Precinct 01-46, Precinct 01-51, Precinct 13-02: Tract 540.10: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2025, Block 2026, Block 2027, Block 2028; Precinct 13-03.

District 35: Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-23, Precinct 01-31, Precinct 01-32, Precinct 01-41, Precinct 01-48, Precinct 01-49, Precinct 04-01, Precinct 04-02, Precinct 04-03, Precinct 04-04, Precinct 04-05, Precinct 04-08, Precinct 04-11, Precinct 04-17, Precinct 04-18.

District 36: Wake County: Precinct 03-00, Precinct 04-06, Precinct 04-07, Precinct 04-09, Precinct 04-10, Precinct 04-13: Tract 534.07: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2053; Precinct 04-14, Precinct 04-15, Precinct 04-16, Precinct 04-19, Precinct 05-00, Precinct 08-03: Tract 537.03: Block Group 1: Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107; Precinct 20-02, Precinct 20-04, Precinct 20-06, Precinct 20-10.

District 37: Wake County: Precinct 04-12, Precinct 04-13: Tract 534.07: Block Group 2: Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2030, Block 2032, Block 2033, Block 2035, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050; Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-06, Precinct 18-03, Precinct 18-08, Precinct 20-01, Precinct 20-03, Precinct 20-05.

District 38: Wake County: Precinct 01-03, Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-09, Precinct 01-14, Precinct 01-21, Precinct 01-25, Precinct 01-27, Precinct 01-35, Precinct 16-02, Precinct 16-03, Precinct 16-05, Precinct 16-06, Precinct 16-07, Precinct 18-01, Precinct 18-02, Precinct 18-04, Precinct 18-05, Precinct 18-06.

District 39: Wake County: Precinct 09-01, Precinct 09-02, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 15-01, Precinct 15-02, Precinct 16-01, Precinct 16-04, Precinct 17-02, Precinct 17-04, Precinct 17-06.

District 40: Wake County: Precinct 01-42, Precinct 01-47, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 08-04, Precinct 08-08, Precinct 13-02: Tract 540.09: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2079, Block 2080, Block 2081, Block 2999; Tract 542.01: Block Group 5: Block 5999; Precinct 14-01, Precinct 14-02, Precinct 19-01, Precinct 19-02, Precinct 19-03, Precinct 19-04, Precinct 19-05, Precinct 19-06, Precinct 19-07, Precinct 19-08.

District 41: Cumberland County: Precinct CROSS CREEK 2, Precinct CROSS CREEK 4, Precinct CROSS CREEK 6, Precinct CROSS CREEK 7, Precinct CROSS CREEK 8, Precinct PEARCES MILL 3: Tract 2: Block Group 3: Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3054, Block 3055, Block 3060, Block 3061, Block 3062, Block 3063, Block 3066; Tract 5: Block Group 1: Block 1007, Block 1009, Block 1011, Block 1012, Block 1013, Block 1014, Block 1029, Block 1030, Block 1032, Block 1034, Block 1035, Block 1043; Tract 15: Block Group 1: Block 1000, Block 1001, Block 1003, Block 1013, Block 1999; Precinct BLACK RIVER, Precinct CROSS CREEK 10, Precinct CROSS CREEK 11, Precinct CROSS CREEK 15, Precinct CROSS CREEK 18: Tract 4: Block Group 1: Block 1037, Block 1038, Block 1039, Block 1040, Block 1043; Tract 7: Block Group 2: Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2023, Block 2025, Block 2026; Precinct CROSS CREEK 20, Precinct CROSS CREEK 22, Precinct CROSS CREEK 23: Tract 25.02: Block Group 2: Block 2001, Block 2002, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2998; Tract 25.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2033, Block 2999; Tract 25.04: Block Group 1: Block 1003, Block 1004, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2000, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2029, Block 2996, Block 2997, Block 2998, Block 2999; Tract 37: Block Group 1: Block 1096; Precinct CROSS CREEK 30, Precinct EASTOVER, Precinct LINDEN, Precinct LONG HILL: Tract 25.02: Block Group 1: Block 1001; Block Group 2: Block 2000, Block 2003, Block 2004, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2999; Block Group 3: Block 3014, Block 3999; Tract 25.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1005, Block 1006, Block 1012, Block 1013, Block 1014, Block 1015, Block 1999; Block Group 2: Block 2001, Block 2030; Tract 37: Block Group 1: Block 1086,

Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1996, Block 1997; Block Group 2: Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2024, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2040, Block 2041, Block 2042, Block 2993, Block 2994, Block 2996, Block 2997; Precinct WADE; Harnett County: Precinct DUKE1, Precinct DUKE2, Precinct LILLINGTON, Precinct STEWARTS CREEK.

District 42: Cumberland County: Precinct AUMAN: Tract 33.02: Block Group 1: Block 1011, Block 1012, Block 1998; Tract 33.07: Block Group 1: Block 1004; Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2026, Block 2027; Precinct BRENTWOOD: Tract 32.03: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1011, Block 1012, Block 1013, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1034, Block 1049, Block 1050, Block 1998; Tract 32.04: Block Group 1: Block 1000, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1999; Precinct CROSS CREEK 17, Precinct CROSS CREEK 27: Tract 33.07: Block Group 2: Block 2000; Tract 33.08: Block Group 2: Block 2015, Block 2016, Block 2017; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014; Precinct CROSS CREEK 28, Precinct CROSS CREEK 32, Precinct CLIFFDALE WEST, Precinct LAKE RIM, Precinct MANCHESTER: Tract 34: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2017, Block 2018, Block 2020, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2074, Block 2087, Block 2088, Block 2089, Block 2090, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2997, Block 2998, Block 2999; Tract 35: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1009, Block 1013; Block Group 2: Block 2000, Block 2007, Block 2008, Block 2009; Tract 36: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1030, Block 1031, Block 1032, Block 1993, Block 1994, Block 1995, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2012, Block 2013, Block 2017, Block 2031, Block 2037, Block 2038, Block 2047, Block 2048, Block 2049, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2995, Block 2996, Block 2998, Block 2999; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4037, Block 4039, Block 4043, Block

4044, Block 4045, Block 4046, Block 4998; Tract 37: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2025, Block 2026, Block 2043, Block 2995; Precinct SPRING LAKE, Precinct WEST AREA: Tract 24: Block Group 1: Block 1008, Block 1009, Block 1015, Block 1999; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Block Group 4: Block 4014, Block 4015, Block 4016, Block 4017; Harnett County: Precinct ANDERSON CREEK: Tract 712: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025, Block 1028, Block 1029, Block 1998; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4017, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4999; Tract 713: Block Group 2: Block 2023; Tract 714: Block Group 2: Block 2071, Block 2072, Block 2073; Precinct BARBECUE: Tract 713: Block Group 2: Block 2022, Block 2028, Block 2044, Block 2049, Block 2050; Precinct JOHNSONVILLE.

District 43: Cumberland County: Precinct CROSS CREEK 1, Precinct CROSS CREEK 3: Tract 22: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2023, Block 2024; Tract 23: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020; Block Group 9: Block 9001, Block 9002, Block 9003, Block 9998; Precinct CROSS CREEK 5, Precinct CROSS CREEK 9, Precinct CROSS CREEK 13, Precinct CROSS CREEK 16, Precinct CROSS CREEK 19, Precinct CROSS CREEK 21, Precinct CROSS CREEK 23: Tract 25.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1011; Block Group 9: Block 9074, Block 9075; Precinct CROSS CREEK 26: Tract 33.04: Block Group 2: Block 2000, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3010; Precinct CROSS CREEK 33, Precinct LONG HILL: Tract 25.04: Block Group 2: Block 2002, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028; Precinct MANCHESTER: Tract 34: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2051, Block 2052, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2091; Precinct WEST AREA: Tract 24: Block Group 1: Block 1007; Block Group 2: Block 2000, Block 2001; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4018, Block 4019; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5011; Tract 25.01: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 9: Block 9000, Block 9001, Block 9002, Block 9003, Block 9004, Block 9006, Block 9010, Block 9011, Block 9016, Block 9017, Block 9018, Block 9019, Block 9020, Block 9024, Block 9044, Block 9076, Block 9077; Tract 25.02: Block Group 1: Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1015, Block 1016, Block 1017, Block 1019, Block 1022, Block 1026, Block

1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1034, Block 1035, Block 1036, Block 1997; Block Group 3: Block 3007, Block 3010, Block 3011, Block 3012, Block 3997; Tract 25.03: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030; Tract 25.04: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023.

District 44: Cumberland County: Precinct CROSS CREEK 3: Tract 20: Block Group 1: Block 1001, Block 1002, Block 1003; Tract 22: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Precinct CUMBERLAND 2, Precinct MORGANTON ROAD, Precinct ARRAN HILLS, Precinct AUMAN: Tract 32.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1027, Block 1029, Block 1030, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1997; Tract 32.05: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Block Group 2: Block 2002, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3999; Precinct BRENTWOOD: Tract 32.03: Block Group 1: Block 1016, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1999; Precinct CROSS CREEK 12, Precinct CROSS CREEK 14, Precinct CROSS CREEK 18: Tract 7: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2019, Block 2020, Block 2021, Block 2022, Block 2024; Block Group 3: Block 3035, Block 3036; Block Group 4: Block 4007, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4023, Block 4035, Block 4036, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048; Precinct CROSS CREEK 24, Precinct CROSS CREEK 25, Precinct CROSS CREEK 26: Tract 20: Block Group 2: Block 2997, Block 2998, Block 2999; Tract 33.04: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3999; Tract 33.09: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1999; Block Group 2: Block 2999; Precinct CROSS CREEK 27: Tract 20: Block Group 2: Block 2996; Tract 33.08: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block

2039, Block 2040, Block 2041, Block 2042, Block 2043; Tract 33.09: Block Group 2: Block 2998; Precinct CROSS CREEK 29, Precinct CROSS CREEK 31, Precinct CROSS CREEK 34, Precinct MONTIBELLO, Precinct STONEY POINT.

District 45: Cumberland County: Precinct CUMBERLAND 1, Precinct CUMBERLAND 3, Precinct HOPE MILLS 1, Precinct HOPE MILLS 2, Precinct HOPE MILLS 3, Precinct PEARCES MILL 2, Precinct PEARCES MILL 3: Tract 15: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016, Block 1017, Block 1018, Block 1019, Block 1025, Block 1026, Block 1027, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1988, Block 1989, Block 1990, Block 1991, Block 1992, Block 1993, Block 1994, Block 1995, Block 1996, Block 1997, Block 1998; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2030, Block 2031, Block 2033, Block 2034; Precinct PEARCES MILL 4, Precinct ALDERMAN, Precinct BEAVER DAM, Precinct CEDAR CREEK, Precinct JUDSON/VANDER, Precinct SHERWOOD, Precinct STEDMAN.

District 46: Hoke County: Precinct BUCHAN, Precinct McCAIN: Tract 9701: Block Group 5: Block 5003, Block 5004, Block 5005; Tract 9702: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1045, Block 1994; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2045, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2128, Block 2129, Block 2130, Block 2131, Block 2132, Block 2133, Block 2134, Block 2135, Block 2136, Block 2137, Block 2138, Block 2139, Block 2140, Block 2141, Block 2142, Block 2143, Block 2144, Block 2145, Block 2146, Block 2147, Block 2148, Block 2149, Block 2150; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3047, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057; Precinct PUPPY CREEK, Precinct ROCKFISH, Precinct STONEWALL: Tract 9704: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block

1016, Block 1017, Block 1030, Block 1034, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1095, Block 1998, Block 1999; Precinct Voting Districts not defined; Robeson County: Precinct EAST HOWELLSVILLE, Precinct WEST HOWELLSVILLE, Precinct LUMBERTON 3, Precinct LUMBERTON 4, Precinct PARKTON, Precinct NORTH ST PAULS, Precinct SOUTH ST PAULS: Tract 9601: Block Group 1: Block 1031, Block 1033, Block 1034; Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3027, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4065, Block 4066; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5031, Block 5032, Block 5033, Block 5041; Tract 9602: Block Group 3: Block 3062, Block 3063, Block 3066, Block 3067, Block 3068; Block Group 5: Block 5999; Tract 9614: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009; Precinct WISHARTS; Scotland County: Precinct 3, Precinct 4, Precinct 5, Precinct 6: Tract 103: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1020, Block 1021, Block 1022, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2040; Tract 104: Block Group 1: Block 1044, Block 1045, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1074, Block 1075, Block 1078, Block 1997, Block 1998, Block 1999; Precinct 8, Precinct 9, Precinct 10.

District 47: Hoke County: Precinct ANTIOCH, Precinct STONEWALL: Tract 9704: Block Group 1: Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1031, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1997; Block Group 2: Block 2000; Robeson County: Precinct BLACK SWAMP: Tract 9605: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5040; Tract 9608: Block Group 1: Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block

1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1999; Block Group 4: Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091; Tract 9618: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2014, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2998, Block 2999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4049, Block 4050, Block 4051; Precinct BURNT SWAMP, Precinct FAIRMONT 2: Tract 9617: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2009, Block 2010, Block 2030, Block 2036, Block 2037, Block 2038, Block 2039, Block 2057, Block 2058, Block 2060, Block 2061, Block 2062, Block 2063, Block 2065; Block Group 3: Block 3047, Block 3048; Precinct LUMBER BRIDGE, Precinct LUMBERTON 1, Precinct LUMBERTON 2, Precinct LUMBERTON 7, Precinct LUMBERTON 8, Precinct NORTH PEMBROKE, Precinct SOUTH PEMBROKE, Precinct PHILADEPLUS, Precinct RAFT SWAMP, Precinct RENNERT, Precinct SADDLETREE, Precinct SOUTH ST PAULS: Tract 9601: Block Group 5: Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5030, Block 5034, Block 5035, Block 5036, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049; Tract 9602: Block Group 5: Block 5000, Block 5001, Block 5029, Block 5031; Precinct SHANNON, Precinct OXENDINE, Precinct PROSPECT, Precinct SMYRNA: Tract 9616: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Block Group 2: Block 2010; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct THOMPSON, Precinct UNION.

District 48: Hoke County: Precinct ALLENDALE, Precinct BLUE SPRINGS, Precinct McCAIN: Tract 9702: Block Group 3: Block 3001, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062; Precinct RAEFORD 1, Precinct RAEFORD 2, Precinct RAEFORD 3, Precinct RAEFORD 4, Precinct RAEFORD 5; Robeson County: Precinct ALFORDSVILLE, Precinct BLACK SWAMP: Tract 9618: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2015; Precinct BRITTS, Precinct FAIRMONT 1, Precinct FAIRMONT 2: Tract 9617: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block

1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1999; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2064, Block 2066, Block 2067; Precinct GADDY, Precinct LUMBERTON 5, Precinct LUMBERTON 6, Precinct MAXTON, Precinct ORRUM, Precinct RED SPRINGS 1, Precinct RED SPRINGS 2, Precinct ROWLAND, Precinct SMYRNA: Tract 9608: Block Group 4: Block 4051, Block 4052, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072; Tract 9616: Block Group 1: Block 1006; Block Group 2: Block 2011; Block Group 3: Block 3020, Block 3035, Block 3036, Block 3037, Block 3038; Precinct STERLINGS, Precinct WHITEHOUSE; Scotland County: Precinct 1, Precinct 2, Precinct 6: Tract 103: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2041; Tract 104: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1046, Block 1047, Block 1048, Block 1049, Block 1061, Block 1062, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1107, Block 1111, Block 1112, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1132, Block 1133, Block 1134, Block 1135, Block 1136, Block 1137; Precinct 7.

District 49: Franklin County, Halifax County: Precinct ROANOKE RAPIDS 1, Precinct ROANOKE RAPIDS 2, Precinct ROANOKE RAPIDS 3, Precinct ROANOKE RAPIDS 4, Precinct ROANOKE RAPIDS 5, Precinct ROANOKE RAPIDS 6, Precinct LITTLETON 2, Precinct ROANOKE RAPIDS 10, Precinct ROANOKE RAPIDS 11; Warren County: Precinct RIVER, Precinct FISHING CREEK, Precinct JUDKINS, Precinct FORK, Precinct ROANOKE.

District 50: Wake County: Precinct 01-45, Precinct 07-01, Precinct 07-02, Precinct 07-03, Precinct 07-04, Precinct 07-05, Precinct 07-06, Precinct 07-07, Precinct 07-09, Precinct 07-10, Precinct 07-11, Precinct 07-12, Precinct 08-01, Precinct 08-02, Precinct 08-03: Tract 537.03: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097; Precinct 08-05, Precinct 08-06, Precinct 11-01, Precinct 11-02.

District 51: Lee County, Harnett County: Precinct BARBECUE: Tract 713: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block

1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1038, Block 1039, Block 1040, Block 1041, Block 1998; Block Group 2: Block 2006; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3046, Block 3047, Block 3048, Block 3997; Precinct UPPER LITTLE RIVER 2; Moore County: Precinct CAMERON, Precinct CARTHAGE.

District 52: Moore County: Precinct BENSALEM, Precinct EAST ABERDEEN, Precinct EUREKA, Precinct EASTWOOD, Precinct KNOLLWOOD, Precinct LITTLE RIVER, Precinct NORTH SOUTHERN PINES, Precinct PINEBLUFF, Precinct PINEDENE, Precinct ROBBINS, Precinct SEVEN LAKES, Precinct SOUTH SOUTHERN PINES, Precinct TAYLORTOWN, Precinct VASS, Precinct WEST ABERDEEN, Precinct WEST MOORE, Precinct WEST END, Precinct PINEHURST A, Precinct PINEHURST B, Precinct PINEHURST C, Precinct D-H-R.

District 53: Harnett County: Precinct ANDERSON CREEK: Tract 706: Block Group 1: Block 1002, Block 1008, Block 1009, Block 1034, Block 1035, Block 1038, Block 1053, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1996, Block 1997; Tract 712: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1026, Block 1027, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2024, Block 2025, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3999; Block Group 4: Block 4000, Block 4008, Block 4016, Block 4018, Block 4019, Block 4020; Precinct AVERASBORO 1, Precinct AVERASBORO 2, Precinct AVERASBORO 3, Precinct AVERASBORO 4, Precinct AVERASBORO 5, Precinct BARBECUE: Tract 712: Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004; Tract 713: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1042, Block 1043, Block 1044, Block

1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2025, Block 2026, Block 2027, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2043, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2992, Block 2993, Block 2994, Block 2995, Block 2996, Block 2997, Block 2998, Block 2999; Block Group 3: Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3998, Block 3999; Precinct BLACK RIVER, Precinct BUCKHORN, Precinct DUKE3, Precinct GROVE 1, Precinct GROVE 2, Precinct HECTORS CREEK, Precinct NEILLS CREEK 1, Precinct NEILLS CREEK 2, Precinct UPPER LITTLE RIVER 1.

District 54: Chatham County, Orange County: Precinct DOGWOOD ACRES, Precinct GLENWOOD, Precinct KINGS MILL, Precinct OWASA, Precinct ST. JOHNS, Precinct WHITE CROSS, Precinct WESTWOOD, Precinct DAMASCUS 1, Precinct DAMASCUS 2.

District 55: Person County, Orange County: Precinct ENO, Precinct HILLSBOROUGH, Precinct CEDAR GROVE, Precinct CAMERON PARK, Precinct CALDWELL, Precinct CHEEKS, Precinct EFLAND, Precinct GRADY BROWN, Precinct ST. MARYS, Precinct TOLARS, Precinct WEST HILLSBOROUGH, Precinct CARR.

District 56: Orange County: Precinct CARRBORO, Precinct BOOKER CREEK, Precinct BATTLE PARK, Precinct COUNTRY CLUB, Precinct CEDAR FALLS, Precinct COKER HILLS, Precinct COLONIAL HEIGHTS, Precinct COLES STORE, Precinct EAST FRANKLIN, Precinct ESTES HILLS, Precinct EASTSIDE, Precinct GREENWOOD, Precinct LIONS CLUB, Precinct LINCOLN, Precinct MASON FARM, Precinct NORTH CARRBORO, Precinct NORTHSIDE, Precinct ORANGE GROVE, Precinct PATTERSON, Precinct RIDGEFIELD, Precinct TOWN HALL, Precinct WEAVER DAIRY, Precinct WEAVER DAIRY SATELLITE.

District 57: Guilford County: Precinct Greene, Precinct Center Grove 1, Precinct Center Grove 2, Precinct Greensboro 16, Precinct Greensboro 27, Precinct Greensboro 28, Precinct Greensboro 30, Precinct Greensboro 31, Precinct Greensboro 32, Precinct Greensboro 33, Precinct Greensboro 34, Precinct Greensboro 35, Precinct Gibsonville, Precinct High Point 6, Precinct Pleasant Garden 2, Precinct Rock Creek 1: Tract 152: Block Group 2: Block 2009, Block 2010; Block Group 3: Block 3016, Block 3017, Block 3024, Block 3025, Block 3026, Block 3033, Block 3034, Block 3035; Block Group 4: Block 4010, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022; Tract 153: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055; Precinct Rock Creek 2, Precinct Fentress 2, Precinct Greensboro 40B: Tract 160.02: Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Precinct Jamestown 3,

Precinct Jamestown 4, Precinct Jamestown 5, Precinct Monroe 3, Precinct North Center Grove: Tract 155: Block Group 1: Block 1046; Tract 156: Block Group 1: Block 1002, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1998, Block 1999; Block Group 2: Block 2012, Block 2013, Block 2014, Block 2039, Block 2040, Block 2041, Block 2042; Tract 157.02: Block Group 1: Block 1002, Block 1003, Block 1998; Precinct North Madison, Precinct Sumner 3, Precinct Sumner 4, Precinct North Clay, Precinct North Washington, Precinct South Clay, Precinct South Washington.

District 58: Guilford County: Precinct Greensboro 1, Precinct Greensboro 2, Precinct Greensboro 3, Precinct Greensboro 4, Precinct Greensboro 5, Precinct Greensboro 6, Precinct Greensboro 7, Precinct Greensboro 9, Precinct Greensboro 10, Precinct Greensboro 11: Tract 109: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2010, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Precinct Greensboro 67, Precinct Greensboro 68, Precinct Greensboro 70, Precinct Greensboro 71, Precinct Greensboro 72, Precinct Greensboro 74, Precinct Greensboro 75, Precinct Greensboro 8, Precinct Pleasant Garden 1, Precinct Rock Creek 1: Tract 153: Block Group 1: Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048; Block Group 3: Block 3002, Block 3003, Block 3005, Block 3009, Block 3010, Block 3011, Block 3012; Precinct Fentress 1, Precinct Jefferson 1, Precinct Jefferson 2, Precinct Jefferson 3, Precinct Jefferson 4, Precinct South Madison, Precinct Sumner 2.

District 59: Guilford County: Precinct Center Grove 3, Precinct Greensboro 11: Tract 107.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1031; Tract 108.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027; Tract 108.02: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Tract 109: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2009, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Precinct Greensboro 12, Precinct Greensboro 13, Precinct Greensboro 14, Precinct Greensboro 15, Precinct Greensboro 17, Precinct Greensboro 18, Precinct Greensboro 19, Precinct Greensboro 20, Precinct Greensboro 21, Precinct Greensboro 22, Precinct Greensboro 23, Precinct Greensboro 24, Precinct Greensboro 25, Precinct Greensboro 26, Precinct Greensboro 29, Precinct Greensboro 36, Precinct Greensboro 37, Precinct Greensboro 38, Precinct Greensboro 44, Precinct Greensboro 45, Precinct Greensboro 48, Precinct Greensboro 49, Precinct Greensboro 63, Precinct Monroe 1, Precinct Monroe 2.

District 60: Guilford County: Precinct Greensboro 46, Precinct Greensboro 52, Precinct Greensboro 53, Precinct Greensboro 54, Precinct Greensboro 55, Precinct Greensboro 57, Precinct Greensboro 60, Precinct Greensboro 61, Precinct Greensboro 65, Precinct Greensboro 66: Tract 164.02: Block Group 1: Block 1000; Tract 165.04: Block Group 1: Block 1028, Block 1036, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043; Precinct Greensboro 69, Precinct Greensboro 73, Precinct High Point 4, Precinct High Point 5, Precinct High Point 7, Precinct High Point 8, Precinct High Point 9, Precinct

High Point 10, Precinct High Point 11, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Sumner 1.

District 61: Guilford County: Precinct HP: Tract 162.02: Block Group 1: Block 1041, Block 1042, Block 1043, Block 1045; Tract 163.02: Block Group 2: Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2054, Block 2055, Block 2056, Block 2057; Tract 164.02: Block Group 1: Block 1083, Block 1084, Block 1085, Block 1086; Tract 164.03: Block Group 1: Block 1013, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1030, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1062, Block 1063, Block 1064, Block 1073, Block 1074, Block 1075, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1998, Block 1999; Tract 164.04: Block Group 1: Block 1032, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063; Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct Greensboro 41, Precinct High Point 14, Precinct High Point 15, Precinct High Point 16, Precinct High Point 20, Precinct High Point 21, Precinct High Point 22, Precinct High Point 23, Precinct High Point 24, Precinct High Point 25, Precinct High Point 26, Precinct High Point 27, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Greensboro 40A, Precinct Greensboro 40B: Tract 125.06: Block Group 1: Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1051, Block 1052, Block 1053; Tract 160.02: Block Group 2: Block 2013, Block 2014, Block 2015, Block 2016; Precinct North Center Grove: Tract 156: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054; Tract 158: Block Group 1: Block 1002; Block Group 3: Block 3000, Block 3001, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3049, Block 3050, Block 3051, Block 3052, Block 3996, Block 3998, Block 3999; Precinct North Deep River, Precinct South Deep River, Precinct Stokesdale.

District 62: Guilford County: Precinct HP: Tract 163.02: Block Group 2: Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2997, Block 2998, Block 2999; Tract 164.02: Block Group 1: Block 1022, Block 1024, Block 1025, Block 1026, Block 1061, Block 1062, Block 1063, Block 1069, Block 1070, Block 1071, Block 1072, Block 1075, Block 1076, Block 1077, Block 1078, Block

1079, Block 1080, Block 1081, Block 1082, Block 1087, Block 1088, Block 1089, Block 1999; Tract 164.03: Block Group 1: Block 1009, Block 1031, Block 1050, Block 1051, Block 1052, Block 1058, Block 1059, Block 1060, Block 1061, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1076, Block 1077; Tract 164.04: Block Group 1: Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1033, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1106, Block 1999; Precinct Friendship 1, Precinct Friendship 2, Precinct Greensboro 39, Precinct Greensboro 42, Precinct Greensboro 43, Precinct Greensboro 47, Precinct Greensboro 50, Precinct Greensboro 51, Precinct Greensboro 56, Precinct Greensboro 58, Precinct Greensboro 59, Precinct Greensboro 62, Precinct Greensboro 64, Precinct Greensboro 66: Tract 165.04: Block Group 1: Block 1010, Block 1011, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1029, Block 1030, Block 1031, Block 1032, Block 1035, Block 1081, Block 1082, Block 1998; Precinct High Point 1, Precinct High Point 2, Precinct High Point 3, Precinct High Point 12, Precinct High Point 13, Precinct High Point 17, Precinct High Point 18, Precinct High Point 19.

District 63: Alamance County: Precinct PLEASANT GROVE, Precinct HAW RIVER, Precinct CENTRAL BOONE, Precinct GRAHAM 3, Precinct EAST GRAHAM, Precinct NORTH GRAHAM, Precinct WEST GRAHAM, Precinct MELVILLE 3, Precinct NORTH MELVILLE, Precinct SOUTH MELVILLE, Precinct BURLINGTON 4, Precinct BURLINGTON 7, Precinct BURLINGTON 8, Precinct EAST BURLINGTON, Precinct NORTH BURLINGTON, Precinct SOUTH BURLINGTON, Precinct WEST BURLINGTON.

District 64: Alamance County: Precinct PATTERSON, Precinct COBLE, Precinct MORTON, Precinct FAUCETTE, Precinct ALBRIGHT, Precinct BOONE 5, Precinct NORTH BOONE, Precinct SOUTH BOONE, Precinct WEST BOONE, Precinct GRAHAM 4, Precinct SOUTH GRAHAM, Precinct NORTH NEWLIN, Precinct SOUTH NEWLIN, Precinct NORTH THOMPSON, Precinct SOUTH THOMPSON, Precinct BURLINGTON 5, Precinct BURLINGTON 6, Precinct BURLINGTON 9, Precinct BURLINGTON 10.

District 65: Caswell County, Rockingham County: Precinct HOGANS, Precinct IRONWORKS, Precinct MAYFIELD, Precinct NEW BETHEL, Precinct OREGON HILL, Precinct RUFFIN, Precinct SIMPSONVILLE, Precinct WILLIAMSBURG, Precinct REIDSVILLE 1, Precinct REIDSVILLE 2, Precinct REIDSVILLE 3, Precinct REIDSVILLE 4, Precinct REIDSVILLE 5, Precinct REIDSVILLE 6.

District 66: Forsyth County: Precinct 021, Precinct 061, Precinct 062, Precinct 064, Precinct 066; Rockingham County: Precinct BETHLEHEM, Precinct CENTRAL AREA, Precinct DRAPER, Precinct DAN VALLEY, Precinct HUNTSVILLE, Precinct MAYODAN, Precinct MARTINS, Precinct PRICE, Precinct SHILOH, Precinct STONEVILLE, Precinct WENTWORTH, Precinct LEAKSVILLE 1, Precinct LEAKSVILLE 2, Precinct LEAKSVILLE 3, Precinct MADISON 1, Precinct MADISON 2, Precinct SPRAY 1.

District 67: Randolph County: Precinct ASHEBORO ARMORY, Precinct ASHEBORO EASTSIDE, Precinct ASHEBORO LINDLEY PARK, Precinct ASHEBORO McCRARY, Precinct ASHEBORO NORTH 1, Precinct ASHEBORO NORTH 2, Precinct BROWER, Precinct COLERIDGE, Precinct FALLS, Precinct FRANKLINVILLE, Precinct GRANT, Precinct LIBERTY, Precinct PLEASANT GROVE, Precinct PROVIDENCE 1, Precinct PROVIDENCE 2, Precinct RAMSEUR, Precinct RANDLEMAN EAST, Precinct RANDLEMAN WEST, Precinct RICHLAND, Precinct STALEY.

District 68: Richmond County, Stanly County: Precinct East Albemarle, Precinct East Center, Precinct New London, Precinct West Center: Tract 9911: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3033, Block 3057, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4021, Block 4022, Block 4023, Block 4025, Block 4026, Block 4027; Block Group 5: Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5997; Precinct Big Lick 2: Tract 9907: Block Group 2: Block 2042, Block 2043; Tract 9908: Block Group 1: Block 1000, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1057, Block 1058; Tract 9909: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2043, Block 2044, Block 2047, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073; Block Group 3: Block 3008, Block 3009; Precinct Ridenhour, Precinct Endy, Precinct Palmerville, Precinct Richfield, Precinct Badin, Precinct Almond.

District 69: Anson County, Montgomery County, Union County: Precinct 07, Precinct 19, Precinct 21, Precinct 23: Tract 205: Block Group 5: Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040; Tract 209.02: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004; Precinct 24: Tract 209.01: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2999; Block Group 3: Block 3030, Block 3031, Block 3032, Block 3039, Block 3040; Tract 209.02: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2: Block 2012, Block 2014, Block 2015, Block 2016, Block 2017, Block 2027, Block 2028, Block 2029; Block Group 3: Block 3000, Block 3001; Precinct 25: Tract 207: Block Group 4: Block 4012, Block 4013, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4048, Block 4049, Block 4050, Block 4051, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4066, Block 4999; Tract 209.01: Block Group 3: Block 3015, Block 3016, Block 3017, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038; Precinct 26, Precinct 27.

District 70: Stanly County: Precinct Albemarle 1, Precinct Albemarle 2, Precinct Albemarle 6, Precinct Albemarle 7, Precinct Albemarle 8, Precinct Furr 1, Precinct Furr 2, Precinct North Albemarle, Precinct South Albemarle,

Precinct West Center: Tract 9911: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3058, Block 3059, Block 3060, Block 3067; Block Group 4: Block 4018, Block 4019, Block 4020, Block 4024, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039; Block Group 5: Block 5046, Block 5047; Precinct Albemarle 10, Precinct Albemarle 11, Precinct Big Lick 1, Precinct Big Lick 2: Tract 9909: Block Group 4: Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4058; Precinct Tyson; Union County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 23: Tract 205: Block Group 5: Block 5033; Tract 206: Block Group 4: Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4051, Block 4994, Block 4995, Block 4996; Precinct 24: Tract 209.01: Block Group 3: Block 3005, Block 3006, Block 3007, Block 3008, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Tract 209.02: Block Group 1: Block 1000; Precinct 25: Tract 206: Block Group 4: Block 4028, Block 4034, Block 4035, Block 4036, Block 4038, Block 4039, Block 4040, Block 4997, Block 4998, Block 4999; Block Group 5: Block 5034, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041; Tract 207: Block Group 3: Block 3025, Block 3026, Block 3027, Block 3028, Block 3038, Block 3039; Block Group 4: Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4998; Tract 209.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024; Precinct 34, Precinct 36, Precinct 43.

District 71: Forsyth County: Precinct 031: Tract 28.07: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2024, Block 2025; Precinct 033: Tract 27.02: Block Group 1: Block 1000, Block 1001, Block 1012; Tract 28.05: Block Group 2: Block 2027, Block 2028; Tract 28.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2008, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Tract 28.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Tract 29.01: Block Group 2: Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2029, Block 2030, Block 2031, Block 2033; Precinct 043: Tract 33.03: Block Group 3: Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039;

Tract 34.01: Block Group 1: Block 1000, Block 1001, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1033, Block 1034, Block 1035, Block 1036, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1056, Block 1057, Block 1058; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Tract 34.02: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2022, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037; Precinct 081, Precinct 082, Precinct 083, Precinct 301, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505: Tract 19.01: Block Group 1: Block 1042, Block 1043, Block 1044, Block 1045; Tract 20.01: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1034, Block 1035, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042; Tract 35: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2000, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3007, Block 3008, Block 3009; Precinct 507, Precinct 606: Tract 20.01: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033; Block Group 2: Block 2000, Block 2001, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Tract 20.02: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2000, Block 2005, Block 2006, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015.

District 72: Forsyth County: Precinct 101: Tract 28.04: Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022; Precinct 122: Tract 37: Block Group 4: Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4082, Block 4083, Block 4087; Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 601, Precinct 603, Precinct 604, Precinct 605, Precinct 606: Tract 20.01: Block Group 2: Block 2002; Tract 20.02: Block Group 1: Block 1000, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 2: Block 2001; Precinct 607, Precinct 701: Tract 11: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3012, Block 3013, Block 3014; Precinct 704, Precinct 901: Tract 2: Block Group 1: Block 1016, Block 1017, Block 1022, Block 1023, Block 1057, Block 1058; Tract 11: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1017, Block 1018, Block 1019; Block Group 3: Block 3000, Block 3001, Block 3002; Tract 12: Block Group 2: Block 2021, Block 2022; Precinct 902, Precinct 903, Precinct 904, Precinct 905.

District 73: Union County: Precinct 05, Precinct 06, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 16, Precinct 17, Precinct 18, Precinct 20,

Precinct 22, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 35, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42.

District 74: Cabarrus County: Precinct 0101, Precinct 0102, Precinct 0103, Precinct 0104, Precinct 0201, Precinct 0202, Precinct 0203, Precinct 0204, Precinct 0205, Precinct 0206, Precinct 0207, Precinct 0407, Precinct 0408, Precinct 0410, Precinct 0900, Precinct 1000, Precinct 1101, Precinct 1209, Precinct 1211, Precinct 1212.

District 75: Cabarrus County: Precinct 0300, Precinct 0401, Precinct 0402, Precinct 0403, Precinct 0404, Precinct 0405, Precinct 0406, Precinct 0409, Precinct 0500, Precinct 0600, Precinct 0700, Precinct 0800, Precinct 1102, Precinct 1201, Precinct 1202, Precinct 1203, Precinct 1204, Precinct 1205, Precinct 1206, Precinct 1207, Precinct 1208, Precinct 1210.

District 76: Rowan County: Precinct Barnhardt Mill, Precinct Bostian Crossroads, Precinct North China Grove, Precinct South Locke, Precinct East Enochville, Precinct Faith, Precinct Rock Grove, Precinct Granite Quarry, Precinct Hatters Shop, Precinct West Kannapolis, Precinct East Kannapolis, Precinct East Landis, Precinct North Locke, Precinct Morgan I, Precinct Morgan II, Precinct Rockwell, Precinct Gold Knob, Precinct Sumner, Precinct Bostian School, Precinct West Enochville.

District 77: Rowan County: Precinct Blackwelder Park, Precinct Bradshaw, Precinct South China Grove, Precinct Cleveland, Precinct Franklin, Precinct Milford Hills County, Precinct East Spencer, Precinct West Landis, Precinct Mount Ulla, Precinct Scotch Irish, Precinct Spencer, Precinct Steele, Precinct Trading Ford, Precinct Unity, Precinct West Ward II, Precinct West Ward I, Precinct South Ward, Precinct North Ward I, Precinct East Ward I, Precinct West Innes, Precinct North Ward II, Precinct Milford Hills City, Precinct West Ward III, Precinct East Ward II.

District 78: Randolph County: Precinct ARCHDALE 1, Precinct ARCHDALE 2, Precinct ARCHDALE 3, Precinct ASHEBORO LOFLIN, Precinct ASHEBORO SOUTHPOINTE, Precinct ASHEBORO WESTSIDE, Precinct BACK CREEK, Precinct CEDAR GROVE EAST, Precinct CEDAR GROVE WEST, Precinct CONCORD, Precinct LEVEL CROSS, Precinct NEW HOPE, Precinct NEW MARKET NORTH, Precinct NEW MARKET SOUTH, Precinct PROSPECT, Precinct TABERNACLE, Precinct TRINITY EAST, Precinct TRINITY TABERNACLE, Precinct TRINITY WEST, Precinct UNION.

District 79: Davie County, Davidson County: Precinct ARCADIA, Precinct LEXINGTON 3, Precinct NORTH DAVIDSON: Tract 603: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2010; Precinct REEDS YADKIN COLLEGE, Precinct REEDY CREEK, Precinct WEST ARCADIA; Iredell County: Precinct Concord: Tract 610: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1025, Block 1028, Block 1029; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 6: Block 6011; Tract 611: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003; Precinct Eagle Mills, Precinct New Hope, Precinct Sharpesburg, Precinct Union Grove.

District 80: Davidson County: Precinct ABBOTTS CREEK, Precinct DENTON, Precinct EMMONS, Precinct GUMTREE, Precinct HEALING SPRINGS, Precinct HOLLY GROVE, Precinct LIBERTY, Precinct MIDWAY, Precinct NORTH DAVIDSON: Tract 602: Block Group 5: Block 5012, Block 5015, Block 5016, Block 5017, Block 5018, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block

5030, Block 5031, Block 5032, Block 5033; Tract 603: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049; Tract 604: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1011, Block 1012; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2025, Block 2026, Block 2027, Block 2029, Block 2030, Block 2031, Block 2039, Block 2040, Block 2041; Precinct SILVER VALLEY, Precinct SOUTH DAVIDSON, Precinct THOMASVILLE 1, Precinct THOMASVILLE 5: Tract 607: Block Group 1: Block 1031, Block 1032; Tract 610: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3018, Block 3019, Block 3020, Block 3021, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Tract 611: Block Group 1: Block 1000, Block 1005; Block Group 2: Block 2001, Block 2002, Block 2004, Block 2005; Precinct THOMASVILLE 8, Precinct THOMASVILLE 9, Precinct THOMASVILLE 10, Precinct WALLBURG, Precinct WELCOME.

District 81: Davidson County: Precinct BOONE, Precinct CENTRAL, Precinct COTTON GROVE, Precinct LEXINGTON 1, Precinct LEXINGTON 2, Precinct LEXINGTON 4, Precinct WARD 1, Precinct WARD 2, Precinct WARD 3, Precinct WARD 4, Precinct WARD 5, Precinct WARD 6, Precinct SILVER HILL, Precinct SOUTHMONT, Precinct THOMASVILLE 2, Precinct THOMASVILLE 3, Precinct THOMASVILLE 4, Precinct THOMASVILLE 5: Tract 610: Block Group 2: Block 2019, Block 2020, Block 2021; Block Group 3: Block 3017, Block 3022, Block 3023, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059; Precinct THOMASVILLE 7, Precinct TYRO.

District 82: Ashe County, Watauga County.

District 83: Wilkes County.

District 84: Avery County, Mitchell County, Caldwell County: Precinct Gamewell 1, Precinct Gamewell 2, Precinct Hudson 2, Precinct Globe Johns River, Precinct Lenoir 1, Precinct Lenoir 2, Precinct Lenoir 3, Precinct Lenoir 4, Precinct Mulberry, Precinct Patterson, Precinct Wilson Creek, Precinct Yadkin Valley, Precinct North Catawba 1, Precinct North Catawba 2.

District 85: McDowell County, Burke County: Precinct Icard 1, Precinct Icard 2, Precinct Icard 3, Precinct Icard 4, Precinct Icard 5, Precinct Lower Fork, Precinct Silver Creek 2: Tract 213.02: Block Group 2: Block 2033, Block 2034, Block 2036; Precinct Silver Creek 3: Tract 203.02: Block Group 3: Block 3009; Tract 213.02: Block Group 2: Block 2022, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2035, Block 2999; Precinct Upper Fork; Caldwell County: Precinct Lovelady Rhodiss.

District 86: Burke County: Precinct Drexel 1, Precinct Drexel 3, Precinct Jonas Ridge, Precinct Linville 1, Precinct Linville 2, Precinct Lovelady 1,

Precinct Lovelady 2, Precinct Lovelady 4, Precinct Lower Creek, Precinct Morganton 1, Precinct Morganton 4, Precinct Morganton 5, Precinct Morganton 6, Precinct Morganton 7, Precinct Morganton 8, Precinct Morganton 9, Precinct Morganton 10, Precinct Quaker Meadows 1, Precinct Quaker Meadows 2, Precinct Silver Creek 1, Precinct Silver Creek 2: Tract 203.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1019, Block 1021, Block 1022, Block 1023, Block 1024; Block Group 2: Block 2003, Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012; Tract 203.02: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3013, Block 3014, Block 3015, Block 3017, Block 3018; Precinct Silver Creek 3: Tract 203.01: Block Group 1: Block 1018, Block 1020; Tract 203.02: Block Group 1: Block 1033; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Block Group 3: Block 3000, Block 3001, Block 3007, Block 3008, Block 3010, Block 3011, Block 3012, Block 3016; Block Group 4: Block 4004, Block 4005, Block 4006, Block 4007, Block 4020, Block 4021; Tract 213.02: Block Group 1: Block 1009, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2023; Precinct Smoky Creek, Precinct Upper Creek.

District 87: Alexander County, Caldwell County: Precinct Hudson 1, Precinct Kings Creek, Precinct Little River, Precinct Lower Creek 1, Precinct Lower Creek 2, Precinct Lower Creek 3, Precinct Lower Creek 4, Precinct Sawmills 1, Precinct Sawmills 2, Precinct Lovelady 1, Precinct Lovelady 2.

District 88: Catawba County: Precinct Brookford, Precinct Conover West, Precinct College Park, Precinct Kenworth, Precinct Greenmont, Precinct Oakwood, Precinct Ridgeview, Precinct Highlands, Precinct Longview North, Precinct Longview South, Precinct Oakland Heights, Precinct St Stephens 1, Precinct St Stephens 2, Precinct Sandy Ridge, Precinct Springs, Precinct Sweetwater: Tract 110: Block Group 2: Block 2018, Block 2024, Block 2025, Block 2026, Block 2028, Block 2029, Block 2030, Block 2031; Block Group 3: Block 3002, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3032, Block 3033; Block Group 4: Block 4016, Block 4017, Block 4018, Block 4019, Block 4021, Block 4022, Block 4023, Block 4024, Block 4029, Block 4030, Block 4031; Precinct Viewmont 1, Precinct Viewmont 2, Precinct Falling Creek, Precinct Northwest.

District 89: Catawba County: Precinct Balls Creek: Tract 114: Block Group 2: Block 2034, Block 2035, Block 2036, Block 2037; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018; Tract 115.01: Block Group 2: Block 2015, Block 2016, Block 2017, Block 2018, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2037; Precinct Banoak, Precinct Blackburn, Precinct Catawba, Precinct Claremont, Precinct Conover East, Precinct East Newton, Precinct Maiden, Precinct Mt Olive, Precinct Mtn View 1, Precinct Mtn View 2, Precinct North Newton, Precinct Oxford, Precinct South Newton, Precinct Startown, Precinct Sweetwater: Tract 109: Block Group 2: Block 2000, Block 2025, Block 2026, Block 2027, Block 2028, Block 2030, Block 2031, Block 2032, Block 2033; Tract 110: Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045,

Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4020, Block 4025, Block 4026, Block 4027, Block 4028, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4083, Block 4084; Tract 111.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1007, Block 1008, Block 1009, Block 1010, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1021; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2081, Block 2082, Block 2083, Block 2086, Block 2087; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3041; Tract 117.01: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Precinct West Newton.

District 90: Alleghany County, Surry County: Precinct Bryan, Precinct Dobson 1, Precinct Dobson 2, Precinct Dobson 3, Precinct Elkin 1, Precinct Elkin 2, Precinct Elkin 3, Precinct Franklin, Precinct Marsh, Precinct Mount Airy 1, Precinct Mount Airy 2, Precinct Mount Airy 7, Precinct Mount Airy 8, Precinct Mount Airy 9, Precinct Pilot 1, Precinct Pilot 2, Precinct Rockford, Precinct Shoals, Precinct Siloam, Precinct Stewarts Creek 1, Precinct Stewarts Creek 2, Precinct Mount Airy 3.

District 91: Stokes County, Forsyth County: Precinct 092; Surry County: Precinct Eldora, Precinct Long Hill, Precinct Mount Airy 4, Precinct Mount Airy 5, Precinct Mount Airy 6, Precinct North Westfield, Precinct South Westfield.

District 92: Yadkin County, Forsyth County: Precinct 055, Precinct 071, Precinct 072, Precinct 073, Precinct 075, Precinct 091, Precinct 131, Precinct 133.

District 93: Forsyth County: Precinct 042, Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 074, Precinct 122: Tract 37: Block Group 2: Block 2041, Block 2042, Block 2043; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4084, Block 4085, Block 4086, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4093, Block

4094, Block 4095, Block 4096, Block 4097, Block 4098, Block 4099, Block 4100, Block 4101, Block 4102, Block 4103, Block 4104, Block 4105, Block 4106, Block 4107, Block 4108, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4121, Block 4997, Block 4998, Block 4999; Tract 38.03: Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Precinct 123, Precinct 505: Tract 35: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1014; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023; Precinct 506, Precinct 602, Precinct 701: Tract 22: Block Group 2: Block 2000, Block 2002, Block 2003, Block 2004, Block 2005, Block 2013; Block Group 5: Block 5000, Block 5001, Block 5002; Tract 25.01: Block Group 3: Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3033, Block 3034, Block 3035; Tract 25.02: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020; Precinct 702, Precinct 703, Precinct 705, Precinct 706, Precinct 707, Precinct 708, Precinct 709, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 807, Precinct 808, Precinct 809, Precinct 901: Tract 11: Block Group 3: Block 3003, Block 3004, Block 3005, Block 3009; Tract 12: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034.

District 94: Forsyth County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 031: Tract 28.07: Block Group 1: Block 1000, Block 1001, Block 1011, Block 1012, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2026, Block 2027, Block 2028, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3012, Block 3013, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027; Precinct 032, Precinct 033: Tract 28.06: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2009, Block 2010, Block 2011; Precinct 034, Precinct 043: Tract 34.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2021, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2035; Precinct 063, Precinct 065, Precinct 067, Precinct 068, Precinct 101: Tract 28.01: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3061, Block 3062, Block 3063; Tract 28.04: Block Group 1: Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1999; Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3011, Block 3017, Block 3023, Block 3024, Block

3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030; Tract 28.05: Block Group 3: Block 3063; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4019; Precinct 111, Precinct 112, Precinct 132, Precinct 801, Precinct 802, Precinct 906, Precinct 907, Precinct 908, Precinct 909.

District 95: Catawba County: Precinct Balls Creek: Tract 115.01: Block Group 2: Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036; Tract 116: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2009, Block 2010, Block 2011; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007; Block Group 4: Block 4000, Block 4004, Block 4005, Block 4006; Precinct East Maiden, Precinct Monogram, Precinct Sherrills Ford, Precinct Lake Norman; Iredell County: Precinct Bethany, Precinct Coddle Creek 1, Precinct Coddle Creek 4, Precinct Concord: Tract 610: Block Group 1: Block 1024, Block 1026, Block 1027; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4083, Block 4084, Block 4096, Block 4097, Block 4098, Block 4099, Block 4100; Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5008; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031; Tract 611: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2029, Block 2030, Block 2031, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3025, Block 3026, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3057, Block 3058, Block 3059, Block 3060; Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown: Tract 611: Block Group 5: Block 5031, Block 5032, Block 5033; Tract 612: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1998, Block 1999; Block Group 2: Block 2017, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5016, Block 5020, Block 5021, Block 5022, Block 5023, Block 5030, Block 5031, Block 5999; Block Group 6: Block 6001, Block 6002, Block 6006, Block 6007, Block 6008, Block 6009, Block 6011, Block 6023, Block 6024, Block 6025, Block 6030, Block 6034, Block 6035, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6043, Block 6044, Block 6045, Block 6998, Block 6999; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7003, Block 7004, Block 7005, Block 7006, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038, Block 7039, Block 7040, Block 7041, Block 7042, Block 7043, Block 7044, Block 7045, Block 7046, Block 7047, Block 7048, Block 7049, Block 7050, Block 7051, Block 7052, Block 7053, Block 7054, Block 7055, Block

7995, Block 7996, Block 7997, Block 7998, Block 7999; Block Group 8: Block 8000, Block 8001, Block 8002, Block 8003, Block 8004, Block 8005, Block 8006, Block 8007, Block 8009, Block 8010, Block 8048, Block 8049, Block 8053, Block 8054, Block 8996, Block 8999; Block Group 9: Block 9002, Block 9003, Block 9004, Block 9005, Block 9006, Block 9007, Block 9008, Block 9009, Block 9010, Block 9011; Precinct Olin, Precinct Shiloh.

District 96: Iredell County: Precinct Barringer, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Chambersburg, Precinct Cool Springs, Precinct Fallstown: Tract 612: Block Group 3: Block 3037, Block 3040, Block 3043, Block 3044, Block 3045, Block 3046; Block Group 4: Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4027, Block 4028, Block 4030, Block 4031, Block 4032; Block Group 5: Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015; Block Group 6: Block 6000, Block 6003, Block 6004, Block 6005, Block 6010, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6022, Block 6026, Block 6027, Block 6028, Block 6029, Block 6031, Block 6032, Block 6033; Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6, Precinct Turnersburg.

District 97: Lincoln County.

District 98: Mecklenburg County: Precinct 127, Precinct 128, Precinct 230, Precinct 238, Precinct 240, Precinct 241: Tract 62.07: Block Group 2: Block 2000, Block 2001, Block 2075, Block 2076, Block 2080, Block 2081; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Tract 63.02: Block Group 1: Block 1020, Block 1021, Block 1025, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1999; Block Group 2: Block 2034, Block 2035, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046; Precinct 242, Precinct 133, Precinct 134, Precinct 142, Precinct 143, Precinct 200, Precinct 202, Precinct 206, Precinct 208, Precinct 209, Precinct 214, Precinct 223, Precinct 224.

District 99: Mecklenburg County: Precinct 060, Precinct 082, Precinct 105, Precinct 107, Precinct 126, Precinct 237, Precinct 239, Precinct 241: Tract 63.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1022, Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1053; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2036, Block 2037, Block 2038; Precinct 132, Precinct 141, Precinct 204, Precinct 205, Precinct 207, Precinct 212.

District 100: Mecklenburg County: Precinct 006, Precinct 007, Precinct 017, Precinct 033, Precinct 034, Precinct 045, Precinct 062, Precinct 063, Precinct 064, Precinct 083, Precinct 084, Precinct 094, Precinct 099, Precinct 102, Precinct 116, Precinct 117, Precinct 125, Precinct 130, Precinct 217.

District 101: Mecklenburg County: Precinct 011, Precinct 013, Precinct 026, Precinct 027, Precinct 054, Precinct 055, Precinct 056, Precinct 079, Precinct 080, Precinct 081, Precinct 089, Precinct 135, Precinct 210, Precinct 211, Precinct 213, Precinct 222.

District 102: Mecklenburg County: Precinct 001, Precinct 002: Tract 24: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3011, Block 3012, Block 3013; Precinct 003, Precinct 004, Precinct 005, Precinct 014, Precinct 028, Precinct 029, Precinct 030, Precinct 042, Precinct 043, Precinct 044: Tract 12: Block Group 1: Block 1001, Block 1002; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018; Tract 13: Block Group 1: Block 1028, Block 1029, Block 1030, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039; Precinct 046, Precinct 061, Precinct 095, Precinct 104, Precinct 108, Precinct 123, Precinct 124.

District 103: Mecklenburg County: Precinct 091, Precinct 112, Precinct 113, Precinct 115, Precinct 118, Precinct 227, Precinct 233, Precinct 234, Precinct 235, Precinct 236, Precinct 136, Precinct 201, Precinct 203, Precinct 215, Precinct 216, Precinct 218, Precinct 219, Precinct 220, Precinct 221.

District 104: Mecklenburg County: Precinct 018, Precinct 035, Precinct 036, Precinct 047, Precinct 048, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 085, Precinct 090, Precinct 093, Precinct 096, Precinct 100, Precinct 103, Precinct 106, Precinct 111, Precinct 119, Precinct 121, Precinct 232, Precinct 131, Precinct 137, Precinct 144.

District 105: Mecklenburg County: Precinct 008: Tract 27: Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009; Block Group 5: Block 5013, Block 5014; Precinct 019, Precinct 057, Precinct 058, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 086, Precinct 087, Precinct 088, Precinct 092, Precinct 101, Precinct 110, Precinct 114, Precinct 226, Precinct 231, Precinct 129, Precinct 139, Precinct 140.

District 106: Mecklenburg County: Precinct 002: Tract 24: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008; Tract 25: Block Group 2: Block 2013, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035; Tract 26: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006; Precinct 008: Tract 27: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006; Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3015; Block Group 4: Block 4000; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011; Precinct 009, Precinct 010, Precinct 015, Precinct 020, Precinct 021, Precinct 022, Precinct 032, Precinct 037, Precinct 038, Precinct 044: Tract 12: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3019, Block 3020, Block 3023, Block 3024; Tract 13: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2014,

Block 2015, Block 2016, Block 2017; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014; Precinct 049, Precinct 050, Precinct 051, Precinct 052, Precinct 059, Precinct 077: Tract 38.04: Block Group 1: Block 1022; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2012; Tract 58.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1077, Block 1079, Block 1999; Tract 59.05: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008; Precinct 097, Precinct 098, Precinct 109, Precinct 120.

District 107: Mecklenburg County: Precinct 012, Precinct 016, Precinct 023, Precinct 024, Precinct 025, Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 053, Precinct 077: Tract 59.05: Block Group 2: Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050; Precinct 078, Precinct 122, Precinct 225, Precinct 228, Precinct 229, Precinct 243, Precinct 138.

District 108: Gaston County: Precinct Gaston Day, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Southpoint, Precinct Cramerton, Precinct New Hope, Precinct Union, Precinct High Shoals, Precinct Alexis, Precinct Dallas 2, Precinct Lucia, Precinct Stanley 1, Precinct Stanley 2, Precinct Mt Holly 1, Precinct Mt Holly 2.

District 109: Gaston County: Precinct York Chester, Precinct Victory, Precinct Pleasant Ridge, Precinct Health Center, Precinct Myrtle, Precinct Highland, Precinct Wood Hill, Precinct Grier, Precinct Sherwood, Precinct Armstrong, Precinct Flint Grove, Precinct Ranlo, Precinct Gardner Park, Precinct Ashbrook: Tract 325.03: Block Group 1: Block 1003; Tract 326: Block Group 1: Block 1020; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Precinct Lowell, Precinct Tryon, Precinct Landers Chapel, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3, Precinct Dallas 1.

District 110: Cleveland County: Precinct Waco, Precinct Casar, Precinct Mulls, Precinct Oak Grove, Precinct Bethware, Precinct Fallston, Precinct Polkville: Tract 9501: Block Group 5: Block 5003, Block 5008, Block 5009, Block 5010, Block 5011; Block Group 6: Block 6072; Gaston County: Precinct Forest Heights, Precinct Robinson 1, Precinct Robinson 2, Precinct Ashbrook: Tract 313.02: Block Group 4: Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033; Tract 322: Block Group 2: Block 2013, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036; Tract 325.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1004, Block 1005, Block 1006, Block 1009; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 325.04: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Tract 326: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025; Precinct South

Gastonia, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Crowders Mountain, Precinct McAdenville.

District 111: Cleveland County: Precinct Shelby 1, Precinct Shelby 2, Precinct Shelby 3, Precinct Shelby 4, Precinct Shelby 5, Precinct Shelby 6, Precinct Shelby 7, Precinct Shelby 8, Precinct Kings Mountain 1, Precinct Kings Mountain 2, Precinct Kings Mountain 3, Precinct Kings Mountain 4, Precinct Lattimore, Precinct Boiling Springs, Precinct Rippy, Precinct Grover, Precinct Hot Springs, Precinct MRB-YO, Precinct Shanghai.

District 112: Rutherford County, Cleveland County: Precinct Kingstown, Precinct Lawndale, Precinct Polkville: Tract 9501: Block Group 3: Block 3048, Block 3049, Block 3062, Block 3063, Block 3064, Block 3065, Block 3067; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4064, Block 4065, Block 4066, Block 4067, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080; Block Group 5: Block 5007, Block 5013, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057; Tract 9502: Block Group 4: Block 4007, Block 4008, Block 4009, Block 4022, Block 4023, Block 4039, Block 4040, Block 4054; Tract 9513: Block Group 1: Block 1005; Tract 9514: Block Group 1: Block 1000, Block 1001, Block 1005, Block 1006, Block 1007, Block 1011; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2006, Block 2009.

District 113: Polk County, Henderson County: Precinct Armory, Precinct Atkinson, Precinct Bat Cave, Precinct Clear Creek, Precinct Edneyville, Precinct East Flat Rock, Precinct Flat Rock, Precinct Grimesdale, Precinct Moores Grove, Precinct North Blue Ridge, Precinct Northeast, Precinct Northwest, Precinct South Blue Ridge, Precinct Southeast, Precinct Southwest, Precinct Hendersonville 1, Precinct Hendersonville 2, Precinct Hendersonville 3.

District 114: Buncombe County: Precinct Asheville 2, Precinct Asheville 3, Precinct Asheville 4, Precinct Asheville 6, Precinct Asheville 10, Precinct Asheville 11, Precinct Asheville 12, Precinct Asheville 13, Precinct Asheville 14, Precinct Asheville 15, Precinct Asheville 16, Precinct Asheville 21, Precinct Asheville 22, Precinct Asheville 23, Precinct Asheville 24, Precinct Flat Creek (40), Precinct Hazel 1 (42), Precinct Hazel 2 (43), Precinct North Buncombe (58), Precinct Reems Creek (59), Precinct Weaverville (67), Precinct Woodland Hills (71), Precinct Asheville 28, Precinct Asheville 27, Precinct Ivy CRU (50, 51).

District 115: Buncombe County: Precinct Asheville 1, Precinct Asheville 7, Precinct Asheville 8, Precinct Asheville 9, Precinct Asheville 17, Precinct Asheville 18, Precinct Asheville 19, Precinct Asheville 20, Precinct Asheville 25, Precinct Black Mountain 1 (32), Precinct Black Mountain 2 (33), Precinct Black Mountain 3 (34), Precinct Black Mountain 5 (36), Precinct Broad River

(37), Precinct Fairview 1 (38), Precinct Fairview 2 (39), Precinct Limestone 4 (57), Precinct Reynolds (60), Precinct Swannanoa 1 (64), Precinct Black Mountain 4 (35), Precinct Asheville 29, Precinct Riceville Swannanoa CRU 2 (62, 66), Precinct Riceville Swannanoa 2 CRU (61, 65).

District 116: Buncombe County: Precinct Asheville 5, Precinct Averys Creek (30), Precinct Biltmore (31), Precinct French Broad (41), Precinct Lower Hominy 1 (44), Precinct Lower Hominy 2 (45), Precinct Lower Hominy 3 (46), Precinct Upper Hominy 2 (48), Precinct Leicester 1 (52), Precinct Limestone 1 (54), Precinct Limestone 2 (55), Precinct Limestone 3 (56), Precinct West Buncombe 1 (68, 681), Precinct West Buncombe 2 (69), Precinct Woodfin (70), Precinct Upper Hominy CRU (47, 49), Precinct Leicester Sandy Mush CRU (63, 53).

District 117: Transylvania County, Henderson County: Precinct Brickton, Precinct Crab Creek, Precinct Etowah South, Precinct Etowah Valley, Precinct Fletcher, Precinct Green River, Precinct Hoopers Creek, Precinct Horseshoe, Precinct Long John Mountain, Precinct Laurel Park, Precinct North Mills River, Precinct Park Ridge, Precinct Pisgah View, Precinct Rugby, Precinct Raven Rock, Precinct South Mills River.

District 118: Madison County, Yancey County, Haywood County: Precinct Crabtree, Precinct Center Waynesville, Precinct East Waynesville, Precinct Saunook, Precinct Beaverdam 1, Precinct Beaverdam 2, Precinct Beaverdam 3, Precinct Beaverdam 4, Precinct Beaverdam 7, Precinct Center Pigeon, Precinct Fines Creek 1, Precinct Fines Creek 2, Precinct North Clyde, Precinct South Clyde, Precinct South Waynesville 1, Precinct South Waynesville 2, Precinct Beaverdam 5-6.

District 119: Jackson County, Swain County, Haywood County: Precinct Allens Creek, Precinct Big Creek, Precinct Cecil, Precinct East Fork, Precinct Hazelwood, Precinct Iron Duff, Precinct Ivy Hill, Precinct Jonathan Creek, Precinct Lake Junaluska, Precinct Pigeon, Precinct White Oak, Precinct West Waynesville; Macon County: Precinct Cowee.

District 120: Cherokee County, Clay County, Graham County, Macon County: Precinct North Franklin, Precinct South Franklin, Precinct East Franklin, Precinct Iotla, Precinct Union, Precinct Millshoal, Precinct Ellijay, Precinct Sugarfork, Precinct Highlands, Precinct Flats, Precinct Smithbridge, Precinct Cartoogechaye, Precinct Nantahala, Precinct Burningtown.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as they were legally defined and recognized in the 2000 United States Census. Boundaries are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of May 1, 2001, to reflect precincts divided or renamed as outlined in subsection (c) of this section. However, in Robeson County PHILADEPLUS is, in fact, PHILADELPHUS, and in Vance County SANDY SCREEK is, in fact, SANDY CREEK. If the boundary line between Iredell and Mecklenburg Counties in the Redistricting Census 2000 TIGER Files conflicts with that provided by Section 1 of Session Law 1998-15 as rewritten by Session Law 2001-429, Section 1 of Session Law 1998-15 as rewritten by Session Law 2001-429 prevails to the extent of the conflict. However, the boundary corner between Forsyth, Stokes, and Rockingham Counties is as established by Chapter 23, Public Laws of 1848-49.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect precincts divided or renamed by county boards of elections after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in the following counties:

(1) Buncombe County:
  a. Precinct Asheville 4 in TIGER is shown as Precincts Asheville 4 and Asheville 28.
  b. Precinct Asheville 22 in TIGER is shown as Precincts Asheville 22 and Asheville 27.
  c. Precinct Asheville 19 in TIGER is shown as Precincts Asheville 19 and Asheville 29.
  d. Precinct Riceville Swannanoa 2 CRU in TIGER is shown as Precincts Riceville Swannanoa 2 CRU and Riceville Swannanoa CRU 2.
  e. Precinct Black Mountain 3 in TIGER is shown as Precincts Black Mountain 3 and Black Mountain 4.

(2) Cabarrus County:
  a. Precinct 0202 in TIGER is shown as Precincts 0202 and 0207.
  b. Precinct 1209 in TIGER is shown as Precincts 1209 and 1212.

(3) Caldwell County: Precinct Lovelady in TIGER is shown as Precincts Lovelady 1 and Lovelady 2.

(4) Chatham County:
  a. Precinct North Williams in TIGER is shown as Precincts North Williams and North Williams 2.
  b. Precinct East Williams in TIGER is shown as Precincts East Williams and East Williams 2.

(5) Craven County: Precinct Havelock in TIGER is shown as Precincts Havelock East and Havelock West.

(6) Franklin County: Precinct Harris in TIGER is shown as Precincts East Harris and West Harris.

(7) Guilford County: Precinct Greensboro 40 in TIGER is shown as Precincts Greensboro 40A and Greensboro 40B.

(8) Johnston County: Precinct East Clayton in TIGER is shown as Precincts East Clayton and South Clayton.

(9) Orange County:
  a. Precinct Frank Porter Graham in TIGER is renamed Precinct Damascus 1.
  b. Precinct Dogwood Acres in TIGER is shown as Precincts Dogwood Acres and Damascus 2.

(10) Rowan County:
  a. Precinct Bostian Crossroads in TIGER is shown as Precincts Bostian Crossroads and Rock Grove.
  b. Precinct Enochville in TIGER is shown as Precincts Enochville and West Enochville.

(11) Wake County:
  a. Precinct 01-32 in TIGER is shown as Precincts 01-32 and 01-49.
  b. Precinct 07-06 in TIGER is shown as Precincts 07-06 and 07-11.
  c. Precinct 10-01 in TIGER is shown as Precincts 10-01 and 10-04.
  d. Precinct 10-02 in TIGER is shown as Precincts 10-02 and 10-03.
  e. Precinct 01-43 in TIGER is shown as Precincts 01-43 and 01-51.
  f. Precinct 07-02 in TIGER is shown as Precincts 07-02 and 07-12.
  g. Precinct 08-04 in TIGER is shown as Precincts 08-04 and 08-08.
  h. Precinct 12-02 in TIGER is shown as Precincts 12-02 and 12-06.
  i. Precinct 18-03 in TIGER is shown as Precincts 18-03 and 18-08.
  j. Precinct 19-02 in TIGER is shown as Precincts 19-02 and 19-06.
  k. Precinct 19-03 in TIGER is shown as Precincts 19-03 and 19-07.
  l. Precinct 19-04 in TIGER is shown as Precincts 19-04 and 19-08.
  m. Precinct 20-04 in TIGER is shown as Precincts 20-04 and 20-10.
  n. Precinct 01-32 in TIGER is shown as Precincts 01-32 and 01-49.

(d) If any precinct boundary is changed, that change shall not change the boundary of a house district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C.S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483; 1981, c. 800; c. 1130, s. 1; 1982, Ex. Sess., c. 4; 1982, 2nd Ex. Sess., c. 1; 1984, Ex. Sess., c. 1, ss. 1, 2; c. 6, ss. 1-6; c. 7; 1991, c. 675, s. 1; 1991, Ex. Sess., c. 5, ss. 1, 2; 1993, c. 553, s. 34; 2001-459, s. 1; 2001-487, s. 77; 2002-1, Ex Sess., ss. 1, 2; 2002-2, Ex. Sess., s. 1.)

Editor's Note. —

Session Laws 2002-1 (Extra Session), s. 3, provides: "The plan adopted by Section 1 of this act is effective for the elections for the years 2002, 2004, 2006, 2008, and 2010 unless the United States Supreme Court reverses the decision holding unconstitutional G.S. 120-2 as it existed prior to the enactment of this act (or the decision is otherwise enjoined, made inoperable or ineffective) , and in any such case the prior version of G.S. 120-2 is again effective."

Session Laws 2002-1 (Extra Session), s. 3.3, provides: "If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. Specifically, the provisions of this act adopting a districting plan for the House of Representatives are severable from the provisions of this act adopting a districting plan for the Senate."

District Plans for 2002 Elections. — Session Laws 2002-1 enacted a House Redistricting Plan ("Proposed House Plan - Sutton 5") and a Senate Redistricting Plan ("Proposed Senate Plan - Fewer Divided Counties"), which were created to correct constitutional deficiencies found by the North Carolina Supreme Court in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002), in Sutton House Plan 3 (enacted by Session Laws 2001-458) and in NC Senate Plan 1C (enacted by Session Laws 2001-459). The House and Senate Redistricting Plans were ratified on May 17, 2002, and became Session Laws 2002-1 on May 20, 2002.

Both plans were subsequently held constitutionally invalid by the North Carolina Superior Court in Stephenson v. Bartlett, No. 01 CVS 2885 (N.C. Sup. Ct. May 31, 2002). In their place, the North Carolina Superior Court, on May 31, 2002, presented "Interim House Redistricting Plan for NC 2002 Elections" and "Interim Senate Redistricting Plan for NC 2002 Elections," and ordered that, upon preclearance by the United States Department of Justice under Section 5 of the Voting Rights Act of 1965, the plans be immediately implemented so that the election process could proceed forthwith. Preclearance was received from the United States Department of Justice by letter dated July 12, 2002.

Both of these plans, which were applicable to the 2002 General Election held on November 5, 2002, can be viewed in a variety of digital formats at the website for the North Carolina General Assembly: http://www.ncleg.net/GIS/Redistricting/Dist_Plans/Proposed/newplans.html

Effect of Amendments. —

Session Laws 2002-1 (Extra Session), ss. 1 and 2, effective May 20, 2002, rewrote subsection (a); and added the last sentence in subsection (b).

Session Laws 2002-2 (Extra Session), s. 2, effective May 21, 2002, rewrote the descriptions for District 8 and District 23 in subsection (a).

CASE NOTES

Constitutionality. — Because the General Assembly enacted its 2001 legislative redistricting plans (Session Laws 2001-458 and 2001-459) in violation of the whole county provisions of N.C. Const., Art. II, § 3(3) and 5(3), these plans are unconstitutional and are therefore void. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Use of both single-member and multi-member districts within the same redistricting plan

violates the Equal Protection Clause of the State Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

§ 120-3. Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The President Pro Tempore of the Senate shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The Deputy President Pro Tempore of the Senate shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The majority and minority leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of seventeen thousand forty-eight dollars ($17,048) payable monthly, and an expense allowance of six hundred sixty-six dollars ($666.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts, except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly. Accordingly, upon convening of the 1997 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of thirteen thousand nine hundred fifty-one dollars ($13,951) payable monthly, and an expense allowance of five hundred fifty-nine dollars ($559.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29; 1987, c. 738, s. 15; c. 830, s. 70; 1987 (Reg. Sess., 1988), c. 1086, s. 9; 1989, c. 752, s. 26; 1991 (Reg. Sess., 1992), c. 900, s. 35; 1993, c. 321, s. 52; 1993 (Reg. Sess., 1994), c. 769, s. 7.5; 1995, c. 507, s. 7.8; 2002-159, s. 39.)

Effect of Amendments. — Session Laws 2002-159, s. 39, effective October 11, 2002, in subsection (a), substituted "($1,413)" for "(1,413)" in the second sentence, and substituted "($836.00)" for "(836.00)" in the third sentence.

§ 120-3.1. Subsistence and travel allowances for members of the General Assembly.

Editor's Note. — Session Laws 2002-101, s. 2, effective August 31, 2002, provides: "Between October 1, 2002, and December 31, 2002, no member may receive per diem or travel allowance on account of the 2001 Regular Session or 2002 Extra Session of the General Assembly, but this sentence does not affect per diem under G.S. 120-37(b)."

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.16. Repayments and purchases.

(a) All repayments and purchases of service credit, allowed under this Article, shall be made within two years after the member first becomes eligible to make such repayments and purchases. All such repayments and purchases not made within two years after the member becomes eligible shall equal the full actuarial cost of the additional service credit as defined in G.S. 135-4(m).

(b) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) **(See editor's note for effective date)** Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article,

may purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. (1983, c. 761, s. 238; 1987, c. 738, s. 31(b); 2002-71, s. 1.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 1 of the act becomes effective January 1, 2003, except that G.S. 120-4.16(c), as enacted by s. 1, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection.

Effect of Amendments. — Session Laws 2002-71, s. 1, designated the formerly undesignated provisions of this section as subsection (a); and added subsections (b) and (c). See editor's note for contingency and effective date.

§ 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 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 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.

(p) In accordance with subsection (a) of this section, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2001, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2001, but before June 30, 2001, 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, 2001, and June 30, 2001.

(q) In accordance with subsection (a) of this section, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2002, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2002, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) 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, 2002, and June 30, 2002. (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); 2001-424, s. 32.22(c); 2002-126, s. 28.8(d).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 28.8(d), effective July 1, 2002, added subsection (q).

§ 120-4.31. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000) , as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 ½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator,

to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (1989, c. 276, s. 1; 1993, c. 531, s. 2; 1995, c. 361, s. 4; 2002-71, s. 2.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 2 of the act is effective when it becomes law (approved August 12, 2002), except that the changes in G.S. 120-4.31(b) become effective January 1, 2000.

Effect of Amendments. — Session Laws 2002-71, s. 2, added the last paragraph in subsection (a); in subsection (b), rewrote the first sentence, and added the last sentence; and rewrote subsection (d). See editor's note for effective date.

§ 120-4.32. Deduction for payments to certain employees' or retirees' associations allowed.

Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a

designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. (2002-126, s. 6.4(d).)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 8.

Elected Officers.

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

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk 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 ninety-two dollars ($292.00) 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-eight thousand three hundred six dollars ($88,306) 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 Office 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. 28.7, 28.8; 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; 2001-424, ss. 32.8, 32.9; 2002-159, s. 35(f).)

Editor's Note. —

Session Laws 2002-101, s. 2, effective August 31, 2002, provides: "Between October 1, 2002, and December 31, 2002, no member may receive per diem or travel allowance on account of the 2001 Regular Session or 2002 Extra Session of the General Assembly, but this sentence does not affect per diem under G.S. 120-37(b)."

Effect of Amendments. —

Session Laws 2002-159, s. 35(f), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History" in subsection (f).

Article 9A.

Lobbying.

§ 120-47.3. Registration fee.

Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the lobbyist or the lobbyist's principal at the time of registration.

A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a lobbyist. Fees so collected shall be deposited in the General Fund of the State. (1975, c. 852, s. 1; 1983, c. 713, s. 50; 1991, c. 740, s. 1.1; 2002-126, s. 29A.33.)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 29A.33, effective November 1, 2002, substituted "two hundred dollars ($200.00) that is" for "seventy-five dollars ($75.00) which fee shall be" in the first paragraph; and substituted "two hundred dollars ($200.00) is" for "seventy-five dollars ($75.00), shall be" in the second paragraph.

§ 120-47.8. Persons exempted from provisions of Article.

OPINIONS OF ATTORNEY GENERAL

Government Officers Were Not Legislative Liaisons. — Officers and employees of the State Board of Elections and Office of the State Controller, who did not lobby the General Assembly as their principal duty, could not be designated as legislative liaisons. See opinion of Attorney General to Sheila Stafford Pope, General Counsel, State of North Carolina, De-

partment of Secretary of State, 2002 N.C. AG LEXIS 4 (1/14/02).

Article 12C.

Joint Select Committee on Low-Level Radioactive Waste.

§ 120-70.33. Powers and duties.

The Joint Select Committee shall have the following powers and duties:

(1) To study alternatives available to the State for dealing with low-level radioactive waste and the ramifications of each of those alternatives;

(2) Repealed by Session Laws 2001-474, s. 12, effective November 29, 2001.

(3) To evaluate actions of the Radiation Protection Commission, the radiation protection programs administered by the Division of Environmental Health of the Department of Environment and Natural Resources, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;

(4) Repealed by Session Laws 2001-474, s. 12, effective November 29, 2001.

(5) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting low-level radioactive waste management;

(6) To review existing and proposed State law and rules affecting low-level radioactive waste management and to determine whether any modification of law or rules is in the public interest;

(7) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(8) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, or the Joint Legislative Utility Review Committee, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1; 1991, c. 342, s. 5; c. 739, s. 4; 1993, c. 501, s. 11; 1997-443, s. 11A.119(a); 2001-474, s. 12; 2002-70, s. 4.)

Effect of Amendments. — Session Laws 2002-70, s. 4, effective July 1, 2002, substituted "the radiation protection programs administered by the Division of Environmental Health" for "the Division of Radiation Protection" in subdivision (3).

Article 12D.

Environmental Review Commission.

§ 120-70.42. Membership; cochairs; vacancies; quorum.

(a) The Environmental Review Commission shall consist of six Senators

appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, and the Chair of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of eight members. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 727, s. 139; 1991, c. 739, s. 5; 1997-31, s. 1; 2002-176, s. 4.)

Effect of Amendments. — Session Laws 2002-176, s. 4, effective October 31, 2002, rewrote the section.

Article 12E.

Joint Legislative Transportation Oversight Committee.

§ 120-70.50. Creation and membership of Joint Legislative Transportation Oversight Committee.

Editor's Note. —

Session Laws 2001-424, ss. 27.6(a) to (*l*), as amended by Session Laws 2002-126, ss. 26.2(a) to (c), provides: "(a) Study Committee Established. — There is established a Highway Trust Fund Study Committee to report to the Joint Legislative Transportation Oversight Committee.

"(b) Membership. — The Study Committee shall be composed of 18 members as follows:

"(1) The Chairs of the Joint Legislative Transportation Oversight Committee.

"(2) Four Representatives and four public members appointed by the Speaker of the House of Representatives.

"(3) Four Senators and four public members appointed by the President Pro Tempore of the Senate.

"The appointing authorities shall make their appointments to reflect the urban-rural diversity of the population of the State.

"(c) Duties of the Study Committee. — The Committee may study all aspects of the Highway Trust Fund. The study shall include the examination of all the following:

"(1) The current status, cost estimates, and feasibility of Highway Trust Fund projects currently listed in Article 14 of Chapter 136 of the General Statutes.

"(2) Unanticipated problems with the structure of the Highway Trust Fund.

"(3) The gap between transportation funding structures and the actual transportation needs of the State.

"(4) Allocation issues raised by the structure of the transportation funding equity distribution formula in G.S. 136-17.2A.

"(5) The feasibility of altering the project eligibility requirements of the Highway Trust Fund, including permitting the Department of Transportation to add projects as long as add-

ing those projects does not delay projects already to be funded by the Highway Trust Fund, projects scheduled under the 2002-2008 Transportation Improvement Program, and does not impair the cash-flow provisions of G.S. 136-176(a1).

"(6) The feasibility of altering the funding allocation structure of the Highway Trust Fund, including the possible use of the Highway Trust Fund to provide the State match for available federal aid highway funds as long as using the funds in this manner does not delay projects already funded by the Highway Trust Fund, projects scheduled under the 2002-2008 Transportation Improvement Program, and does not impair the cash-flow provisions of G.S. 136-176(a1).

"(7) Any other issue related to the Highway Trust Fund or transportation funding.

"(d) Vacancies. — The appointing authority shall fill any vacancy on the Study Committee.

"(e) Cochairs. — Cochairs of the Study Committee shall be the cochairs of the Joint Legislative Transportation Oversight Committee. The Study Committee shall meet upon the call of the Chairs. A quorum of the Study Committee shall be eight members.

"(f) Expenses of Members. — Members of the Study Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(g) Staff. — The Legislative Services Office shall assign professional and clerical staff to the assist the Study Committee in its work.

"(h) Consultants. — The Study Committee may hire consultants to examine specific issues and subjects related to the study, in accordance with G.S. 120-32.02.

"(i) Meetings During Legislative Session. — The Study Committee may meet during a regular or extra session of the General Assembly, subject to approval of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

"(j) Meeting Location. — The Study Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Study Committee in the State Legislative Building or the Legislative Office Building.

"(k) Report. — The report of the study shall be made to the Joint Legislative Transportation Oversight Committee no later than the first day of the 2003 Session of the General Assembly. Upon the filing of its final report, the Study Committee shall terminate.

"(*l*) Funding. — The Study Committee shall be funded from funds available to the Joint Legislative Transportation Oversight Committee, in accordance with G.S. 120-70.52."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-170, s. 7, provides: "The Joint Legislative Transportation Oversight Committee shall study the creation of a moped identification tag program administered by a third-party contractor approved by the Commissioner of Motor Vehicles. The Committee shall report its findings and recommendations on this issue to the General Assembly by March 1, 2003."

Article 12F.

Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.60. Commission established.

The Joint Legislative Commission on Seafood and Aquaculture is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Commission" means the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1; 2002-165, s. 1.3.)

Effect of Amendments. — Session Laws 2002-165, s. 1.3, effective October 23, 2002, substituted "Commission" for "Committee" in the section heading.

§ 120-70.62. Powers and duties.

Editor's Note. —

Session Laws 2002-15, ss. 2-4, provides: "The Joint Legislative Commission on Seafood and Aquaculture shall review the statutory changes recommended by the Marine Fisheries Commission in the August 2001, Hard Clam Fishery Management Plan and the August 2001, Oyster Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, including any legislative proposals, to the 2003 General Assembly.

"The Joint Legislative Commission on Seafood and Aquaculture shall review recommendations of the Marine Fisheries Commission regarding the moratorium on issuing new shellfish cultivation leases in Core Sound and the shellfish cultivation program. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, including any legislative proposals, to the 2003 General Assembly."

"The Joint Legislative Commission on Seafood and Aquaculture shall study the process by which the Department of Health and Human Services develops and issues fish consumption advisories. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, including any legislative proposals, to the 2003 General Assembly."

Article 12L.

Revenue Laws Study Committee.

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

Editor's Note. — Session Laws 2002-172, s. 2.7, provides: "The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study the use, the effectiveness, and the cost versus benefits of the Job Development Investment Grant Program created in this act [Session Laws 2002-172], the Bill Lee Act credits in Chapter 105 of the General Statutes, and the Industrial Recruitment Competitive Fund. The Study Committee may report the results of its study and any recommendations to the 2004 Regular Session of the 2003 General Assembly and shall make a final report by March 15, 2005, to the 2005 General Assembly."

Session Laws 2002-172, s. 3.2, provides: "The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study options for additional economic incentives for the film industry and shall make a report to the 2003 General Assembly on its findings, including any recommendations for legislative action."

§ 120-70.108. Property Tax Subcommittee.

(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of six members. The Senate cochair of the Committee shall designate three members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The House cochair of the Committee shall designate three members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs.

(b) The Property Tax Subcommittee shall study, examine, and, if necessary, recommend changes to the property tax system. The Subcommittee shall include in its study an examination of all classes of property, including exemptions and exclusions of property from the property tax base. The Subcommittee shall also study the present-use value system, including the following:

(1) Examine the implementation and application of the current present-use value statutes.

(2) Evaluate other tax credits, including adjustments to and credits for ad valorem taxes, to encourage agricultural, forestry, horticultural, and conservation use of land.
(3) Evaluate the treatment of undeveloped land in ad valorem tax.
(4) Evaluate the possibility of amending the present-use value system and developing other tax incentives to encourage conservation and environmental protection of land. The study shall include the feasibility of allowing lands managed for conservation and the preservation of water quality, wildlife habitats, and other conservation purposes to be taxed at their present-use value.
(5) Evaluate the possibility of adding more specific land and resource management criteria to the sound management programs required for all lands enrolled in the present-use value system.
(6) Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirement for land to qualify as forestland.

(c) The Subcommittee shall report any recommendations to the Revenue Laws Study Committee. (2002-184, s. 8.)

Editor's Note. — Session Laws 2002-184, s. 13, makes the section effective October 31, 2002.

Article 14.

Legislative Ethics Act.

Part 2. Statement of Economic Interest.

§ 120-93. County boards of elections to notify candidates of economic-interest-statement requirements.

Each county board of elections shall provide for notification of the economic-interest-statement requirements of G.S. 120-89, 120-96, and 120-98 to be given to any candidate filing for nomination or election to the General Assembly at the time of his or her filing in the particular county. Each county board of elections shall also provide notification of those requirements to each candidate nominated by a new party under G.S. 163-98 for the General Assembly, if the candidate will be on the ballot in that county. The county board shall notify the new-party candidate immediately upon that county board's being notified by the State Board of Elections that the party has certified that candidate's nomination. (1975, c. 564, s. 1; 1987 (Reg. Sess., 1988), c. 1081, s. 4; 2002-159, s. 55(c).)

Effect of Amendments. — Session Laws 2002-159, s. 55(c), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, added the second and third sentences.

§ 120-98. Penalty for failure to file.

(a) If a candidate does not file the statement of economic interest within the time required by this Article, the county board of elections shall immediately notify the candidate by registered mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the party nominee, or in the case of a candidate nominated by a

new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. If the delinquent candidate was nominated by a new party under G.S. 163-98, the State Board of Elections shall decertify the candidate, and no county board of elections shall place the candidate's name on the general election ballot as nominee of the party. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(b) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 5.

(c) If a person appointed to fill a vacant seat in the General Assembly pursuant to G.S. 163-11 does not file the statement of economic interest within the time required by this Article, the Legislative Services Officer shall notify the person that the statement must be received within 15 days of notification. If the statement is not received within the time allowed in this subsection, then the Legislative Services Officer shall notify the Legislative Ethics Committee of the failure to file the statement. (1975, c. 564, s. 1; 1987 (Reg. Sess., 1988), c. 1028, ss. 4, 5; 2001-119, s. 6; 2002-159, s. 55(d).)

Effect of Amendments. —

Session Laws 2002-159, s. 55(d), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, in subsection (a), substituted "party nominee, or in the case of a candidate nominated by a new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections" for "nominee of his party" in the first sentence, and inserted the next-to-last sentence.

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) **(For contingent repeal, see editor's note)** 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) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(55) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.
(56) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(57) The Information Resource Management Commission, as established by G.S. 147-33.78.
(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.
(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.
(75) The North Carolina Turnpike Authority.
(76) The Economic Investment Committee established under G.S. 143B-437.54. (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; 2001-474, s. 13; 2001-487, s. 21(b); 2002-126, s. 6.6(b); 2002-133, s. 5; 2002-172, s. 2.5.)

Editor's Note. —

Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it

does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (http://www.jus.state.nc.us/lrframe.htm).

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-133, s. 5, and Session Laws 2002-172, s. 2.5, each added a subdivision (75) to this section. The subdivision (75) as added by Session Laws 2002-172, s. 2.5, has been renumbered as subdivision (76) at the direction of the Revisor of Statutes.

Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 6.6(b), repealed subdivision (25). See editor's note for contingent effective date.

Session Laws 2002-133, s. 5, effective October 3, 2002, added subdivision (75).

Session Laws 2002-172, s. 2.5, effective October 31, 2002, added the subdivision designated herein as subdivision (76).

Article 17.

Confidentiality of Legislative Communications.

§ 120-130. Drafting and information requests to legislative employees.

OPINIONS OF ATTORNEY GENERAL

Public Access to Legislator's Redistricting Communications. — Communications between legislators and members of the public about redistricting issues are generally public records without any limitation as to the date of the communications; however, communications between legislators and legislative employees, including employees serving as legal counsel to members, become public records only upon the date of the enactment of the redistricting plan which is the subject of the communications; and each legislator is properly treated as the custodian of his or her e-mail communications whether directly available in the legislator's computer or stored in the legislature's computer system. See opinion of Attorney General to Mr. Terrence D. Sullivan, Director, Research Division, North Carolina General Assembly, 2002 N.C. AG LEXIS 11 (2/14/02).

§ 120-131. Documents produced by legislative employees.

OPINIONS OF ATTORNEY GENERAL

Public Access to Legislator's Redistricting Communications. — Communications between legislators and members of the public about redistricting issues are generally public records without any limitation as to the date of the communications; however, communications between legislators and legislative employees, including employees serving as legal counsel to members, become public records only upon the date of the enactment of the redistricting plan which is the subject of the communications; and each legislator is properly treated as the custodian of his or her e-mail communications whether directly available in the legislator's computer or stored in the legislature's computer system. See opinion of Attorney General to Mr. Terrence D. Sullivan, Director, Research Division, North Carolina General Assembly, 2002 N.C. AG LEXIS 11 (2/14/02).

§ 120-133. Redistricting communications.

OPINIONS OF ATTORNEY GENERAL

Public Access to Legislator's Redistricting Communications. — Communications between legislators and members of the public about redistricting issues are generally public records without any limitation as to the date of the communications; however, communications between legislators and legislative employees, including employees serving as legal counsel to members, become public records only upon the date of the enactment of the redistricting plan which is the subject of the communications; and each legislator is properly treated as the custodian of his or her e-mail communications whether directly available in the legislator's computer or stored in the legislature's computer system. See opinion of Attorney General to Mr. Terrence D. Sullivan, Director, Research Division, North Carolina General Assembly, 2002 N.C. AG LEXIS 11 (2/14/02).

ARTICLE 19.

Commission on Agriculture and Forestry Awareness.

Effect of Amendments. — Session Laws 2002-165, s. 1.4, effective October 23, 2002, substituted "Agriculture and Forestry Awareness" for "Agriculture, Forestry, and Seafood Awareness" in the article heading.

ARTICLE 29.

Joint Legislative Oversight Committee on Capital Improvements.

§ 120-258. Committee created.

There is established the Joint Legislative Oversight Committee on Capital Improvements. The Committee consists of 16 members as follows:

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

(2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

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. 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. (2002-126, s. 29.3.)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this article effective July 1, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 120-259. Purpose and powers of the Committee.

(a) The Joint Legislative Oversight Committee on Capital Improvements

shall examine, on a continuing basis, capital improvements approved and undertaken for State facilities and institutions. As used in this section "capital improvements" includes repairs and renovations, and "State facilities and institutions" includes facilities and institutions of The University of North Carolina.

(b) The Committee shall have oversight over implementation of the Capital Improvements Planning Act established under Article 1B of Chapter 143 of the General Statutes and shall consider the State six-year capital improvement plan developed pursuant to G.S. 143-34.45.

(c) The Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120.19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

(d) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2002-126, s. 29.3.)

§ 120-260. 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 Capital Improvements. 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 nine 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. (2002-126, s. 29.3.)

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Article 1.

General Provisions.

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

Local Modification. — Town of Lillington: 2002-47, s. 1.

§ 121-5. Public records and archives.

Cross References. — As to removal or review of discharge papers from files of the register of deeds, see G.S. 47-113.1.

§ 121-7. Historical museums.

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

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on permanent loan any artifact owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited to the State treasury to the credit of the Office of Archives and History Artifact Fund and shall be used only for the purchase of other artifacts. No artifact curated by any agency of the Department of Cultural Resources may be pledged or mortgaged.

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

(c) Title to an artifact whose ownership is unknown or whose owner cannot be located passes to the Department of Cultural Resources if:

(1) The artifact was placed on loan with the Office of Archives and History for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Office of Archives and History as a loan, gift, purchase, or other arrangement is unknown; and

(2) The artifact has been a part of the inventory of the Office of Archives and History for more than five years; and

(3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records, to locate and inform the owner, his heirs or successors, that the Office of Archives and History is holding the artifact and to clarify the artifact's status with that Office.

To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources shall mail, first class postage prepaid, a notice to the last known address of the owner of the artifact or the last known address of the owner's heirs or successors. The Department need not mail a notice, if after exercising due diligence to find a record within the Department of Cultural Resources indicating the owner of the artifact and his latest address, that information is not available. If no claim is made within 90 days from the date that notice is mailed, the Department of Cultural Resources shall publish a notice in three papers of general circulation once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is submitted to the Department of Cultural Resources, the Department may determine that legal title to the artifact is vested in the Office of Archives and History.

(d) Any person claiming legal title to an artifact to which the North Carolina Office of Archives and History also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the Department originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Office of Archives and History and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B. (1973, c. 476, s. 48; 1979, c. 861, s. 1; 1987, c. 721, s. 1; 1991, c. 689, s. 191(a); c. 757, s. 6; 1993 (Reg. Sess., 1994), c. 769, s. 12.3; 1997-411, s. 4; 2002-159, s. 35(g).)

Effect of Amendments. — Session Laws 2002-159, s. 35(g), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History or the North

Carolina Museum of History Division" and other similar terms throughout the section; and made minor stylistic changes throughout the section.

§ 121-8. Historic preservation program.

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

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

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

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

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

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

(g) Abandoned Cemeteries. — The Department of Cultural Resources is authorized to take appropriate measures to record and permanently preserve information of significant historical genealogical or archaeological value when,

in the opinion of the Department, any such information located within an abandoned cemetery is in imminent danger of loss or destruction because of the condition or circumstances of the cemetery. The Department may obtain access to any abandoned cemetery for the purpose of recording and preserving information of significant historical, genealogical or archaeological value pursuant to Chapter 15, Article 4A of the General Statutes: Provided, that prior to the requesting of the administrative warrant, the Department shall contact the affected landowners and request their consent for access to their lands for the purpose of gathering such information. If consent is not granted, the Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. Service of this notice may be in any manner prescribed by N.C.G.S. 1A-1 Rule 4(j). Any measures taken by the Department pursuant to this subsection shall be effected in such a manner as to cause as little inconvenience or disruption as possible to the owners of the land upon which the abandoned cemetery is located and of land necessary to obtain access to the cemetery. (1973, c. 476, s. 48; 1981, c. 215; 1989, c. 65; 2002-159, s. 35(h).)

Effect of Amendments. — Session Laws 2002-159, s. 35(h), effective October 11, 2002, substituted "Deputy Secretary of Archives and History" for "Director of the Division of Archives and History" in subsection (b).

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

§ 122C-1. Short title.

Editor's Note. —

Session Laws 2002-126, s. 10.24(a), (b), provides: "(a) In order to ensure that individuals receive effective substance abuse prevention services, 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 individuals:

"(1) Designate an Office of Substance Abuse Prevention within the Department as outlined in the North Carolina Comprehensive Strategic Plan for Substance Abuse Prevention. This Office shall be responsible for the implementation of the goals in the Comprehensive Strategic Plan for Substance Abuse Prevention. The Office shall also maintain the Interagency Agreement for Substance Abuse Prevention Services and ensure continuing collaboration between agencies that are parties to the Agreement.

"(2) Provide only those prevention services that are evidenced-based and have been determined to be effective in preventing alcohol and other drug problems.

"(3) Propose rules for the licensure of prevention programs to ensure quality of service delivery in local communities. Rules shall be subject to review and adoption by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(4) Ensure that services are provided by qualified prevention professionals.

"(5) Implement an outcome-based system utilizing standard risk assessments and data elements consistent with appropriate evaluation of prevention programs.

"(b) The Department shall report on its activities under this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than December 1, 2002."

§ 122C-3. Definitions.

CASE NOTES

The statutory definition of "mentally ill," as applied, was not unconstitutionally vague. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

The trial court correctly found the appellant "dangerous to others," under this section and § 122C-276.1, in spite of the appellant's objection that murders which happened 10 years in the past should not be considered because of their "remoteness," where, from both evidentiary and medical perspectives, the nature of his crimes was more important than their timing, and where the court's findings on his dangerousness were also rooted in additional evidence unrelated to his prior crimes, including (1) his past and present mental illness, (2) his behavior since July 17, 1988 (including "slaw incident" during which he became upset and angry with his job supervisor over his co-worker's premature disposal of coleslaw from the hospital grill where he was employed), and (3) his high likelihood of post-release relapse into multi-substance abuse, which all experts agreed was a trigger for his 1988 psychosis during which he killed four people and wounded several others. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

Appellant Found "Dangerous to others" Under This Section and G.S. 122C-276.1. — Record supported trial court's judgment that defendant who was acquitted of multiple homicides by reason of insanity and was committed to a mental hospital did not meet his burden of proving he no longer had a mental illness and was not dangerous. In re Hayes, — N.C. App. —, 564 S.E.2d 305, 2002 N.C. App. LEXIS 648 (2002).

Facts Supporting Finding as to Mental Illness. —

The appellant could be found "mentally ill" although he was neither psychotic nor drug or alcohol dependent. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

Cited in Gregory v. Kilbride, — N.C. App. —, 565 S.E.2d 685, 2002 N.C. App. LEXIS 685 (2002).

Article 1A.

MH/DD/SA Consumer Advocacy Program.

(This article has a contingent effective date)

§ 122C-10. (This article has a contingent effective date — see note) MH/DD/SA Consumer Advocacy Program.

The General Assembly finds that many consumers of mental health, developmental disabilities, and substance abuse services are uncertain about their rights and responsibilities and how to access the public service system to obtain appropriate care and treatment. The General Assembly recognizes the importance of ensuring that consumers have information about the availability of services and access to resources to obtain timely quality care. There is established the MH/DD/SA Consumer Advocacy Program. The purpose of this Program is to provide consumers, their families, and providers with the information and advocacy needed to locate appropriate services, resolve complaints, or address common concerns and promote community involve-

Article 1A has a contingent effective date. See notes.

ment. It is further the intent of the General Assembly that the Department, within available resources and pursuant to its duties under this Chapter, ensure that the performance of the mental health care system in this State is closely monitored, reviews are conducted, findings and recommendations and reports are made, and that local and systemic problems are identified and corrected when necessary to promote the rights and interests of all consumers of mental health, developmental disabilities, and substance abuse services. (2001-437, s. 2; 2002-126, s. 10.30.)

Editor's Note. — Session Laws 2001-437, s. 4-4, as amended by Session Laws 2002-126, s. 10.30, provides that s. 2 of the act, which added this Article, is effective only if funds are appropriated by the 2003 General Assembly, for that purpose, and that s. 2 becomes effective July 1 of the fiscal year for which funds are appropriated by the 2003 General Assembly for that purpose.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-11. (This article has a contingent effective date — see notes) MH/DD/SA Consumer Advocacy Program/definitions.

Unless the context clearly requires otherwise, as used in this Article:

(1) "MH/DD/SA" means mental health, developmental disabilities, and substance abuse.

(2) "State Consumer Advocate" means the individual charged with the duties and functions of the State MH/DD/SA Consumer Advocacy Program established under this Article.

(3) "State Consumer Advocacy Program" means the State MH/DD/SA Consumer Advocacy Program.

(4) "Local Consumer Advocate" means an individual employed and certified by the State Consumer Advocate to perform the duties and functions of the MH/DD/SA Local Consumer Advocacy Program in accordance with this Article.

(5) "Local Consumer Advocacy Program" means a local MH/DD/SA Local Consumer Advocacy Program.

(6) "Consumer" means an individual who is a client or a potential client of public services from a State or area facility. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 1A has a contingent effective date. See notes.

§ 122C-12. (This article has a contingent effective date — see note) State MH/DD/SA Consumer Advocacy Program.

The Secretary shall establish a State MH/DD/SA Consumer Advocacy Program office in the Office of the Secretary of Health and Human Services. The Secretary shall appoint a State Consumer Advocate. In selecting the State Consumer Advocate, the Secretary shall consider candidates recommended by citizens' organizations representing the interest of individuals with needs for mental health, developmental disabilities, and substance abuse services. The State Consumer Advocate may hire individuals to assist in executing the State Consumer Advocacy Program and to act on the State Consumer Advocate's behalf. The State Consumer Advocate shall have expertise and experience in MH/DD/SA, including expertise and experience in advocacy. The Attorney General shall provide legal staff and advice to the State Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-13. (This article has a contingent effective date — see note) State Consumer Advocate duties.

The State Consumer Advocate shall:

(1) Establish Local Quality Care Consumer Advocacy Programs described in G.S. 122C-14 and appoint the Local Consumer Advocates.

(2) Establish certification criteria and minimum training requirements for Local Consumer Advocates.

(3) Certify Local Consumer Advocates. The certification requirements shall include completion of the minimum training requirements established by the State Consumer Advocate.

(4) Provide training and technical Advocacy to Local Consumer Advocates.

(5) Establish procedures for processing and resolving complaints both at the State and local levels.

(6) Establish procedures for coordinating complaints with local human rights committees and the State protection and advocacy agency.

(7) Establish procedures for appropriate access by the State and Local Consumer Advocates to State, area authority, and county program facilities and records to ensure MH/DD/SA. The procedures shall include, but not be limited to, interviews of owners, consumers, and employees of State, area authority, and county program facilities, and on-site monitoring of conditions and services. The procedures shall ensure the confidentiality of these records and that the identity of any complainant or consumer will not be disclosed except as otherwise provided by law.

Article 1A has a contingent effective date. See notes.

(8) Provide information to the public about available MH/DD/SA services, complaint procedures, and dispute resolution processes.

(9) Analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to consumers and recommend changes as considered necessary to the Secretary.

(10) Analyze and monitor data relating to complaints or concerns about access and issues to identify significant local or systemic problems, as well as opportunities for improvement, and advise and assist the Secretary in developing policies, plans, and programs for ensuring that the quality of services provided to consumers is of a uniformly high standard.

(11) Submit a report annually to the Secretary, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Joint Legislative Health Care Oversight Committee containing data and findings regarding the types of problems experienced and complaints reported by or on behalf of providers, consumers, and employees of providers, as well as recommendations to resolve identified issues and to improve the administration of MH/DD/SA facilities and the delivery of MH/DD/SA services throughout the State. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-14. (This article has a contingent effective date — see note) Local Consumer Advocate; duties.

(a) The State Consumer Advocate shall establish a Local MH/DD/SA Consumer Advocacy Program in locations in the State to be designated by the Secretary. In determining where to locate the Local Consumer Advocacy Programs, the Secretary shall ensure reasonable consumer accessibility to the Local Consumer Advocates. Local Consumer Advocates shall administer the Local Consumer Advocacy Programs. The State Consumer Advocate shall appoint a Local Consumer Advocate for each of the Local Consumer Advocacy Programs. The State Consumer Advocate shall supervise the Local Consumer Advocates.

(b) Pursuant to policies and procedures established by the State Consumer Advocate, the Local Consumer Advocate shall:

(1) Assist consumers and their families with information, referral, and advocacy in obtaining appropriate services.

(2) Assist consumers and their families in understanding their rights and remedies available to them from the public service system.

(3) Serve as a liaison between consumers and their families and facility personnel and administration.

(4) Promote the development of consumer and citizen involvement in addressing issues relating to MH/DD/SA.

Article 1A has a contingent effective date. See notes.

(5) Visit the State, area authority, or county program facilities to review and evaluate the quality of care provided to consumers and submit findings to the State Consumer Advocate.
(6) Work with providers and consumers and their families or advocates to resolve issues of common concern.
(7) Participate in regular Local Consumer Advocate training established by the State Consumer Advocate.
(8) Report regularly to area authorities and county programs, county and area authority boards, and boards of county commissioners about the Local Consumer Advocate's activities, including the findings made pursuant to subdivision (5) of this subsection.
(9) Provide training and technical assistance to counties, area authority boards, and providers concerning responding to consumers, evaluating quality of care, and determining availability of services and access to resources.
(10) Coordinate activities with local human rights committees based on procedures developed by the State Consumer Advocate.
(11) Provide information to the public on MH/DD/SA issues.
(12) Perform any other related duties as directed by the State Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-15. (This article has a contingent effective date — see note) State/Local Consumer Advocate; authority to enter; communication with residents, clients, patients; review of records.

(a) For purposes of this section, G.S. 122C-16 and G.S. 122C-17, "Consumer Advocate" means either the State Consumer Advocate or any Local Consumer Advocate.

(b) In performing the Consumer Advocate's duties, a Consumer Advocate shall have access at all times to any State or area facility and shall have reasonable access to any consumer or to an employee of a State or area facility. Entry and access to any consumer or to an employee shall be conducted in a manner that will not significantly disrupt the provision of services. If a facility requires visitor registration, then the Consumer Advocate shall register.

(c) In performing the Consumer Advocate's duties, a Consumer Advocate may communicate privately and confidentially with a consumer. A consumer shall not be compelled to communicate with a Consumer Advocate. When initiating communication, a Consumer Advocate shall inform the consumer of the Consumer Advocate's purpose and that a consumer may refuse to communicate with the Consumer Advocate. A Consumer Advocate also may communicate privately and confidentially with State and area facility employees in

Article 1A has a contingent effective date. See notes.

performing the Consumer Advocate's duties.

(d) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a consumer, in the course of performing the Consumer Advocate's duties, the Consumer Advocate may access any information, whether recorded or not, concerning the admission, discharge, medication, treatment, medical condition, or history of any consumer to the extent permitted by federal law and regulations. Notwithstanding any State law pertaining to the privacy of personnel records, in the course of the Consumer Advocate's duties, the Consumer Advocate shall have access to personnel records of employees of State, area authority, or county program facilities. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-16. (This article has a contingent effective date — see note) State/Local Consumer Advocate; resolution of complaints.

(a) Following receipt of a complaint, a Consumer Advocate shall attempt to resolve the complaint using, whenever possible, informal mediation, conciliation, and persuasion.

(b) If a complaint concerns a particular consumer, the consumer may participate in determining what course of action the Consumer Advocate should take on the consumer's behalf. If the consumer has an opinion concerning a course of action, the Consumer Advocate shall consider the consumer's opinion.

(c) Following receipt of a complaint, a Consumer Advocate shall contact the service provider to allow the service provider the opportunity to respond, provide additional information, or initiate action to resolve the complaint.

(d) Complaints or conditions adversely affecting consumers that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the Consumer Advocate to the appropriate licensing agency under Article 2 of this Chapter. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 1A has a contingent effective date. See notes.

§ 122C-17. (This article has a contingent effective date — see note) State/Local Consumer Advocate; confidentiality.

(a) Except as required by law, a Consumer Advocate shall not disclose the following:

(1) Any confidential or privileged information obtained pursuant to G.S. 122C-15 unless the affected individual authorizes disclosure in writing; or

(2) The name of anyone who has furnished information to a Consumer Advocate unless the individual authorizes disclosure in writing.

(b) Violation of this section is a Class 3 misdemeanor, punishable only by a fine not to exceed five hundred dollars ($500.00).

(c) All confidential or privileged information obtained under this section and the names of persons providing information to a Consumer Advocate are exempt from disclosure pursuant to Chapter 132 of the General Statutes. Access to substance abuse records and redisclosure of protected information shall be in compliance with federal confidentiality laws protecting medical records. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-18. (This article has a contingent effective date — see note) State/Local Consumer Advocate; retaliation prohibited.

No one shall discriminate or retaliate against any person, provider, or facility because the person, provider, or facility in good faith complained or provided information to a Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-19. (This article has a contingent effective date — see note) State/Local Consumer Advocate; immunity from liability.

(a) The State and Local Consumer Advocate shall be immune from liability

Article 1A has a contingent effective date. See notes.

for the good faith performance of official Consumer Advocate duties.

(b) A State or area facility, its employees, and any other individual interviewed by a Consumer Advocate are immune from liability for damagesresulting from disclosure of any information or documents to a Consumer Advocate pursuant to this Article. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 122C-20. (This article has a contingent effective date — see note) State/Local Consumer Advocate; penalty for willful interference.

Willful interference by an individual other than the consumer or the consumer's representative with the State or a Local Consumer Advocate in the performance of the Consumer Advocate's official duties is a Class 1 misdemeanor. (2001-437, s. 2; 2002-126, s. 10.30.)

Cross References. — For contingent effective date, see editor's note at G.S. 122C-10.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 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.

(e1) The Department shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

(1) Was the owner, principal, or affiliate of a licensable facility under Chapter 122C or Chapter 131D that had its license revoked until 60 months after the date of the revocation.

(2) Is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of this Chapter until 60 months after the date of the violation.

(3) Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C- 24.1(a) until 60 months after the date of reinstatement or restoration of the license.

(4) Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D until 60 months after the date of reinstatement or restoration of the license.

(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; 2002-164, s. 4.1.)

Effect of Amendments. —
Session Laws 2002-164, s. 4.1, effective October 23, 2002, added subsection (e1).

Article 3.

Clients' Rights and Advance Instruction.

Part 1. Client's Rights.

§ 122C-62. Additional rights in 24-hour facilities.

CASE NOTES

Unsupervised Pass Denied. — Trial court did not err in denying recommendation of unsupervised passes for a not guilty by reason of insanity patient; G.S. 122C-62(b)(4) required court approval via a court order prior to the patient being granted visits outside the custody of the facility, and visits outside the custody of the facility included unsupervised passes or visits on the hospital premises in addition to off-campus visits. In re Williamson, — N.C. App. —, 564 S.E.2d 915, 2002 N.C. App. LEXIS 711 (2002).

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

§ 122C-111. Administration.

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director or program director shall administer the programs of the area authority or county program, as applicable, and enforce applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area and county program directors and State facility directors shall provide for the coordination of public services between area authorities, county programs, and State facilities. The area authority or county program shall monitor the provision of mental health, developmental disability, and substance abuse services for compliance with the law, which monitoring shall not supercede or duplicate the regulatory authority or functions of agencies of the Department. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2001-437, s. 1.6; 2002-164, s. 4.2.)

Effect of Amendments. —
Session Laws 2002-164, s. 4.2, effective October 23, 2002, added the last sentence.

§ 122C-112.1. Powers and duties of the Secretary.

Expedited Review of Requests for Waivers from Rules Pertaining to Mental Health, Developmental Disabilities, and Substance Abuse Services. — Session Laws 2002-160, s. 7(a)-(c), effective October 17, 2002, and expiring July 1, 2005, provides: "(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and G.S. 122C-114 as provided in this section.

"(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

"(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by October 1, 2002 and annually thereafter."

§ 122C-114. Powers and duties of the Commission.

Expedited Review of Requests for Waivers from Rules Pertaining to Mental Health, Developmental Disabilities, and Substance Abuse Services. — Session Laws 2002-160, s. 7(a)-(c), effective October 17, 2002, and expiring July 1, 2005, provides: "(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and G.S. 122C-114 as provided in this section.

"(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three

years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

"(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by October 1, 2002 and annually thereafter."

§ 122C-115.2. Business plan required; content, process, certification.

(a) Every county, through an area authority or county program, shall provide for development, review, and approval of a business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. A business plan shall provide detailed information on how the area authority or county program will meet State standards, laws, and rules for ensuring quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. The business plan shall be in effect for at least three State fiscal years.

(b) Business plans shall include the following:

(1) Description of how the following core administrative functions will be carried out:

a. Planning. — Local services plans that identify service gaps and methods for filling the gaps, ensure the availability of an array of services based on consumer needs, provision of core services, equitable service delivery among member counties, and prescribing the efficient and effective use of all funds for targeted services. Local planning shall be an open process involving key stakeholders.

b. Provider network development. — Ensuring available, qualified providers to deliver services based on the business plan. Development of new providers and monitoring provider performance and service outcomes. Provider network development shall address consumer choice and fair competition. For the purposes of this section, a "qualified provider" means a provider who meets the provider qualifications as defined by rules adopted by the Secretary.

c. Service management. — Implementation of uniform portal process. Service management shall include appropriate level and intensity of services, management of State hospitals/facilities bed days, utilization management, case management, and quality management. If services are provided directly by the area authority or county program, then the plan shall indicate how consumer choice and fair competition in the marketplace is ensured.

d. Financial management and accountability. — Carrying out business functions in an efficient and effective manner, cost-sharing, and managing resources dedicated to the public system.

e. Service monitoring and oversight. — Ensuring that services provided to consumers and families meet State outcome standards and ensure quality performance by providers in the network.

f. Evaluation. — Self-evaluation based on statewide outcome standards and participation in independent evaluation studies.

g. Collaboration. — Collaborating with other local service systems in ensuring access and coordination of services at the local level. Collaborating with other area authorities and county programs and the State in planning and ensuring the delivery of services.

h. Access. — Ensuring access to core and targeted services.

(2) Description of how the following will be addressed:

a. Reasonable administrative costs based on uniform State criteria for calculating administrative costs and costs or savings anticipated from consolidation.

b. Proposed reinvestment of savings toward direct services.

c. Compliance with the catchment area consolidation plan adopted by the Secretary.

d. Based on rules adopted by the Secretary, method for calculating county resources to reflect cash and in-kind contributions of the county.

e. Financial and services accountability and oversight in accordance with State and federal law.

f. The composition, appointments, selection process, and the process for notifying each board of county commissioners of all appointments made to the area authority board.

g. The population base of the catchment area to be served.

h. Use of local funds for the alteration, improvement, and rehabilitation of real property as authorized by and in accordance with G.S. 122C-147.

i. The resources available and needed within the catchment area to prevent out-of-community placements and shall include input from the community public agencies.

(3) Other matters determined by the Secretary to be necessary to effectively and efficiently ensure the provision of mental health, developmental disabilities, and substance abuse services through an area authority or county program.

(c) The county program or area authority proposing the business plan shall submit the proposed plan as approved by the board of county commissioners to the Secretary for review and certification. The Secretary shall review the business plan within 30 days of receipt of the plan. If the business plan meets all of the requirements of State law and standards adopted by the Secretary, then the Secretary shall certify the area authority or county program as a single-county area authority, a single-county program, a multicounty area authority, or a multicounty program. Implementation of the certified plan shall begin within 30 days of certification. If the Secretary determines that changes to the plan are necessary, then the Secretary shall so notify the submitting county program or area authority and the applicable participating boards of county commissioners and shall indicate in the notification the changes that need to be made in order for the proposed program to be certified. The submitting county program or area authority shall have 30 days from receipt of the Secretary's notice to make the requested changes and resubmit the amended plan to the Secretary for review. The Secretary shall provide whatever assistance is necessary to resolve outstanding issues. Amendments to the business plan shall be subject to the approval of the participating boards of county commissioners.

(d) Annually, in accordance with procedures established by the Secretary, each area authority and county program submitting a business plan shall enter into a memorandum of agreement with the Secretary for the purpose of ensuring that State funds are used in accordance with priorities expressed in the business plan. (2001-437, s. 1.9; 2002-164, s. 4.3.)

Expedited Review of Requests for Waivers from Rules Pertaining to Mental Health, Developmental Disabilities, and Substance Abuse Services. — Session Laws 2002-160, s. 7(a)-(c), effective October 17, 2002, and expiring July 1, 2005, provides: "(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and G.S. 122C-114 as provided in this section.

"(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

"(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by October 1, 2002 and annually thereafter."

Editor's Note. — Session Laws 2002-164, s. 4.11, provides: "The Department of Health and Human Services shall report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Senate Health and Human Services Appropriations Subcommittee and the House of Representatives Appropriations Subcommittee on Health and Human Services by June 1, 2003, regarding the business plan information required by G.S. 122C-115.2(b), as amended by Section 4.3 of this act."

Effect of Amendments. — Session Laws 2002-164, s. 4.3, effective October 23, 2002, added subdivision (b)(2)i.

§ 122C-118.1. Structure of area board.

(a) An area board shall have no fewer than 11 and no more than 25 members. In a single-county area authority, the members shall be appointed by the board of county commissioners. Except as otherwise provided, in areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. The boards of county commissioners within the multicounty area shall have the option to appoint the members of the area board in a manner other than as required under this section by adopting a resolution to that effect. The boards of county commissioners in a multicounty area authority shall indicate in the business plan each board's method of appointment of the area board members in accordance with G.S. 122C-115.2(b). These appointments shall take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. Individuals appointed to the board

shall include an individual with financial expertise or a county finance officer, an individual with expertise in management or business, and an individual representing the interests of children. A member of the board may be removed with or without cause by the initial appointing authority. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

(b) At least fifty percent (50%) of the members of the area board shall represent the following:

(1) A physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry.

(2) A clinical professional from the fields of mental health, developmental disabilities, or substance abuse.

(3) A family member or an individual from citizens' organizations composed primarily of consumers or their family members, representing the interests of individuals:
   a. With mental illness; and
   b. In recovery from addiction; and
   c. With developmental disabilities.

(4) Openly declared consumers:
   a. With mental illness; and
   b. With developmental disabilities; and
   c. In recovery from addiction.

(c) The board of county commissioners may elect to appoint a member of the area authority board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one-fourth shall be appointed for one year, one-fourth for two years, one-fourth for three years, and all remaining members for four years. Members other than county commissioners shall not be appointed for more than two consecutive terms.

(e) Upon request, the board shall provide information pertaining to the membership of the board that is a public record under Chapter 132 of the General Statutes. (2001-437, s. 1.11(b); 2002-159, s. 40(a).)

Effect of Amendments. — Session Laws 2002-159, s. 40(a), effective October 11, 2002, substituted "G.S. 122C-115.2(b)" for "G.S. 122C-155.2(b)" in the sixth sentence of subsection (a).

Part 4. Area Facilities.

§ 122C-143.2: Repealed by Session Laws 2001-437, s. 1.16, effective July 1, 2002.

Editor's Note. — Session Laws 2002-159, s. 40(b), effective October 11, 2002, had substituted "G.S. 122C-147.1(d)(2)" for "G.S. 147.1(c)92)" in subsection (c).

§ 122C-147.2. Purchase of services and reimbursement rates.

Editor's Note. — Session Laws 2001-424, s. 21.56, as amended by Session Laws 2001-513, s. 1(i), and by Session Laws 2002-126, s. 10.25, provides: "(a) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding. The resulting cost shall be the maximum included for the private agency in the contracting are program's unit cost finding.

"(b) If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Part 5. State Facilities.

§ 122C-181. Secretary's jurisdiction over State facilities.

Editor's Note. —

Session Laws 2002-159, s. 86, provides: "Notwithstanding any other provision of law, the Department of Health and Human Services shall expend from funds available in the 2002-2003 fiscal year the sum of two million dollars ($2,000,000) for the purpose of planning and preliminary design through the schematic phase of replacement hospitals for Cherry and Broughton psychiatric hospitals. The Department shall ensure that the identification and use of the funds for these purposes do not adversely impact direct services for mental health, developmental disabilities, or substance abuse and do not impact adversely area or county mental health, developmental disabilities, and substance abuse services programs. The replacement hospitals for Cherry Hospital and Broughton Hospital shall be located in the Counties of Wayne and Burke to serve the Eastern and Western regions of the State."

Session Laws 2002-159, s. 91, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted by the University of North Carolina School of Medicine and the Psychology Department within the School of Arts and Sciences at the University of North Carolina at Chapel Hill at Dorothea Dix Hospital and John Umstead Hospital, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the School of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry, and the University of North Carolina School of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. Likewise, the Secretary shall consult with the University of North Carolina School of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina School of Arts and Sciences."

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

CASE NOTES

Applied in Gregory v. Kilbride, — N.C. App. —, 565 S.E.2d 685, 2002 N.C. App. LEXIS 685 (2002).

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

CASE NOTES

Negligence. — Involuntary commitment statutes, including G.S. 122C-263 are designed to protect against arbitrary or ill-considered involuntary commitment and, although there may be some "generalized safety implications" in those statutes, they are not considered public safety statutes as defined by the North Carolina Supreme Court; therefore, any violation thereof cannot be considered negligence per se. Gregory v. Kilbride, — N.C. App. —, 565 S.E.2d 685, 2002 N.C. App. LEXIS 685 (2002).

§ 122C-268. Inpatient commitment; district court hearing.

CASE NOTES

Standards on Review. —

Appellate court applied the same standard it used in reviewing a trial court's order committing a defendant to a mental hospital to defendant's appeal from a trial court's order recommitting him to a mental hospital; the record supported the trial court's judgment that defendant who was acquitted of multiple homicides by reason of insanity should not be released because he did not meet his burden of proving he no longer had a mental illness and was not dangerous. In re Hayes, — N.C. App. —, 564 S.E.2d 305, 2002 N.C. App. LEXIS 648 (2002).

§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity acquittees.

CASE NOTES

The trial court correctly found the appellant "dangerous to others," under this section and G.S. 122C-3(11),

Record supported trial court's judgment that defendant who was acquitted of multiple homicides by reason of insanity and was committed to a mental hospital did not meet his burden of proving he no longer had a mental illness and was not dangerous. In re Hayes, — N.C. App. —, 564 S.E.2d 305, 2002 N.C. App. LEXIS 648 (2002).

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

Article 1.

State Personnel System Established.

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

CASE NOTES

Chapter 126 clearly gives State Personnel Commission power, etc.

There was just cause to demote the highway patrol employee as the employee drank three beers within a short period; proceeded to drive after drinking; exceeded the speed limit; and two alco-sensor tests registered 0.09 and 0.08 alcohol concentration readings. Davis v. N.C. Dep't of Crime Control & Pub. Safety, — N.C. App. —, 565 S.E.2d 716, 2002 N.C. App. LEXIS 777 (2002).

§ 126-1.1. Career State employee defined.

Editor's Note. —

Session Laws 2002-126, s. 28.3A, as amended by Session Laws 2002-159, s. 82, provides: "Any person who is a full-time permanent employee on September 30, 2002, of (i) a local board of education, or (ii) the State, who is eligible for annual leave shall have a one-time additional 10 days of annual leave credited on that date. Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of this act are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. Employees paid underS ection 7.45 of this act shall not be eligible for this additional annual leave unless they are at the top of the irrespective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that may be carried forward. Part-time permanent employees and 9- or 10-month employees shall receive a pro rata amount of the 10 days.

"The General Assembly encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees. Included within this may be salary increases within available funds to employees not receiving special annual leave bonuses."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-159, s. 87, provides: "Any employee subject to a reduction in force action pursuant to Executive Order Number 22 whose position was ultimately funded in S.L. 2002-126 shall maintain the employee's career State employee status as provided in G.S. 126-1.1. Employees may also purchase vacation leave up to the amount that they had accrued, not to

exceed 240 hours, prior to the date of their separation. Employees who had accrued in excess of 240 hours of annual leave shall have that balance reinstated. These employees shall also receive the "Special Annual Leave Bonus" as specified in Section 28.3A of S.L. 2002-126."

§ 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) All employees of the following local entities:
a. Area mental health, developmental disabilities, and substance abuse authorities.
b. Local social services departments.
c. County health departments and district 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 the Governor's 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 the Lieutenant Governor's 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), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.

(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. 147-33.78.
(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.
(21) Employees of the Clean Water Management Trust Fund.
(22) Employees of the North Carolina Turnpike Authority.

(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. Notwithstanding the provisions of this subdivision, or the other requirements of this subsection, the Governor may at any time increase by five the number of exempt policymaking positions at the Department of Health and Human Services, but at no time shall the total number of exempt policymaking positions exceed 105. The Governor shall notify the General Assembly and the State Personnel Director of the additional positions designated hereunder.

(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 Depart-

ment 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; 2001-92, s. 2; 2001-424, s. 32.16(a); 2001-474, s. 15; 2001-487, ss. 21(d), 30(a), 30(b); 2002-126, s. 28.4; 2002-133, s. 4.)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Subdivision (c1)(21), as added by Session Laws 2002-133, s. 4, was renumbered as subdivision (c1)(22) at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2002-126, s. 28.4, effective July 1, 2002, added the last two sentences of subdivision (d)(1).

Session Laws 2002-133, s. 4, effective October 3, 2002, added the subdivision designated herein as subdivision (c1)(22).

OPINIONS OF ATTORNEY GENERAL

Acquisition of Nonprofit Corporation by University of North Carolina Health Care System. — Employees of a nonprofit corporation would not become state employees after the acquisition of the corporation by the University of North Carolina Health Care System. See opinion of Attorney General to Representative Daniel T. Blue, Jr., 2000 N.C. AG LEXIS 23 (3/8/2000).

Employees of a nonprofit corporation would not become state employees after the acquisition of the corporation by the University of North Carolina Health Care System. See opinion of Attorney General to Ms. Susan H. Ehringhaus, Senior University Counsel, 2000 N.C. AG LEXIS 32 (2/17/2000).

Article 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-8. Minimum leave granted State employees.

Editor's Note. — Session Laws 2002-126, s. 28.3B, provides: "A State employee is entitled to take up to 52 weeks of leave without pay during a five-year period in order to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition. For State employees subject to the State Personnel Act, this leave shall be administered under the Family and Medical Leave procedures of the State Personnel Commission. Benefits under this section for employees not subject to the State Personnel Act shall be administered under the Family and Medical Leave procedures applicable to those employees. Benefits under this section are supplemental to any benefit to which an employee may otherwise be entitled."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 6.

Equal Employment and Compensation Opportunity; Assisting in Obtaining State Employment.

§ 126-18. Compensation for assisting person in obtaining State employment barred; exception.

OPINIONS OF ATTORNEY GENERAL

Referral Incentive Award Program. — A "Referral Incentive Award" program would not violate this section because it did not allow the referring state employee to receive any sort of compensation from any other source related to the referral and the program did not have any provision in it that would require or allow the state to pay any kind of fee that might be charged by a licensed referral source to the jobhunter. See opinion of Attorney General to Mr. Ronald G. Penny, State Personnel Director, 2000 N.C. AG LEXIS 10 (6/30/2000).

Article 7.

The Privacy of State Employee Personnel Records.

§ 126-22. Personnel files not subject to inspection under § 132-6.

OPINIONS OF ATTORNEY GENERAL

Statewide flexible benefits plan could properly provide, through its third-party administrator, for the direct deposit of payments to spending account participants and could legally allow for the release of a participant's bank account information to the third-party administrator without violating any confidentiality or privacy laws; the third-party administrator acted as the agent of the state and of flexible benefits plan in administering the spending accounts of participants of flexible benefits plan. See opinion of Attorney General to Mr. Ronald Penny, State Personnel Director, 1999 N.C. AG LEXIS 24 (11/30/99).

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-35. Just cause; disciplinary actions for State employees.

CASE NOTES

"Just Cause". —

There was just cause to demote the highway patrol employee as the employee drank three beers within a short period; proceeded to drive after drinking; exceeded the speed limit; and two alco-sensor tests registered 0.09 and 0.08 alcohol concentration readings. Davis v. N.C. Dep't of Crime Control & Pub. Safety, — N.C. App. —, 565 S.E.2d 716, 2002 N.C. App. LEXIS 777 (2002).

Failure to Show Just Cause. —

Health board's dismissal of director for the omission a preaudit certificate on contracts was an error, as the board did not establish that the omission could produce disruption of work, a threat to persons or property, or any other serious effect that required immediate action, as required by G.S. 126-35. Steeves v. Scot. County Bd. of Health, — N.C. App. —, 567 S.E.2d 817, 2002 N.C. App. LEXIS 913 (2002).

§ 126-36. Appeal of unlawful State employment practice.

CASE NOTES

To Whom Article Applicable. —

Statute merely provides a plaintiff with "the right to appeal" a wrongful retaliation claim directly to the State Personnel Commission. G.S. 126-36(b), and such "right to appeal" does not otherwise bar an action which meets the requirements of the Whistleblower Act, G.S. 126-84 et seq.; when G.S. 126-36(b) is read in para materia with the Whistleblower Act, the two statutes are not irreconcilable. Wells v. N.C. Dep't of Corr., — N.C. App. —, 567 S.E.2d 803, 2002 N.C. App. LEXIS 929 (2002).

Cited in Candillo v. N.C. Dep't of Corr., 199 F. Supp. 2d 342, 2002 U.S. Dist. LEXIS 13272 (M.D.N.C. 2002); Wells v. N.C. Dep't of Corr., — N.C. App. —, 567 S.E.2d 803, 2002 N.C. App. LEXIS 929 (2002).

§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.

CASE NOTES

Cited in Candillo v. N.C. Dep't of Corr., 199 F. Supp. 2d 342, 2002 U.S. Dist. LEXIS 13272 (M.D.N.C. 2002); Steeves v. Scot. County Bd. of Health, — N.C. App. —, 567 S.E.2d 817, 2002 N.C. App. LEXIS 913 (2002).

ARTICLE 14.

Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

CASE NOTES

Construction with Other Statutes. — Section 126-36(b) merely provides a plaintiff with "the right to appeal" a wrongful retaliation claim directly to the State Personnel Commission. and such "right to appeal" does not otherwise bar an action which meets the requirements of the Whistleblower Act, G.S. 126-84 et seq.; when G.S. 126-36(b) is read in para materia with the Whistleblower Act, the two statutes are not irreconcilable. Wells v. N.C. Dep't of Corr., — N.C. App. —, 567 S.E.2d 803, 2002 N.C. App. LEXIS 929 (2002).

Cited in Wells v. N.C. Dep't of Corr., — N.C. App. —, 567 S.E.2d 803, 2002 N.C. App. LEXIS 929 (2002).

Chapter 127A.

Militia.

Article 3.

National Guard.

Article 3.

National Guard.

§ 127A-40. Pensions for the members of the North Carolina national guard.

(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of fifty dollars ($50.00) per month for 20 years' creditable military service with an additional five dollars ($5.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred dollars ($100.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard.

(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the armed forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3.

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State

Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to and transferred from the Department of Crime Control and Public Safety. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard who is qualified for the above retirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(h1) Any member or former member of the North Carolina national guard who is qualified for benefits under this section and who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the member. A plan of deductions pursuant to this subsection shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3; 2002-126, s. 6.4(g).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 6.4(g), effective July 1, 2002, inserted subsection (h1).

Chapter 128.

Offices and Public Officers.

Article 3.

Retirement System for Counties, Cities and Towns.

Article 1.

General Provisions.

§ 128-1. No person shall hold more than one office; exception.

OPINIONS OF ATTORNEY GENERAL

Tribal Chairman. — The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and related statutes. See opinion of Attorney General to The Honorable Ronnie Sutton, N.C. House of Representatives, 2000 N.C. AG LEXIS 6 (11/17/2000).

§ 128-1.1. Dual-office holding allowed.

OPINIONS OF ATTORNEY GENERAL

Tribal Chairman. — The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and related statutes. See opinion of Attorney General to The Honorable Ronnie Sutton, N.C. House of Representatives, 2000 N.C. AG LEXIS 6 (11/17/2000).

§ 128-1.2. Ex officio service by county and city representatives and officials.

OPINIONS OF ATTORNEY GENERAL

Tribal Chairman. — The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and related statutes. See opinion of Attorney General to The Honorable Ronnie Sutton, N.C. House of Representatives, 2000 N.C. AG LEXIS 6 (11/17/2000).

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

OPINIONS OF ATTORNEY GENERAL

Members of the Environmental Management Commission continue to hold their positions until other appointments are made. See opinion of Attorney General to Mr. William Holman, Secretary, North Carolina Department of Environment and Natural Resources, 2000 N.C. AG LEXIS 5 (5/9/2000).

Article 2.

Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.

CASE NOTES

Cited in Jones v. Buchanan, 164 F. Supp. 2d 734, 2001 U.S. Dist. LEXIS 14951 (W.D.N.C. 2001); Harmon v. Buchanan, 164 F. Supp. 2d 649, 2001 U.S. Dist. LEXIS 14956 (W.D.N.C. 2001).

§ 128-17. Petition for removal; county attorney to prosecute.

CASE NOTES

Cited in Jones v. Buchanan, 164 F. Supp. 2d 734, 2001 U.S. Dist. LEXIS 14951 (W.D.N.C. 2001); Harmon v. Buchanan, 164 F. Supp. 2d 649, 2001 U.S. Dist. LEXIS 14956 (W.D.N.C. 2001).

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

Local Modification. — Catawba: 1995, c. 306, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 2; Mecklenburg: 1995, c. 532, s. 1 ; 1995 (Reg. Sess., 1996), c. 693, s. 1; city of Asheville: 1981, c. 737; city of Charlotte: 1947, c. 926, amended by Session Laws 1949, c. 734; 1951, c. 387; 1965, c. 575; 1969, c. 132; 1971, c. 860; c. 903, s. 2; 1973, c. 267; 1983, c. 506; (as to Art. 3) 1985, c. 185; 1987, c. 506; 1987 (Reg. Sess., 1988), c. 1033; 1989, c. 248; c. 770, s. 45; 1991 (Reg. Sess., 1992), c. 830; c. 1030, s. 51.6; 1993 (Reg. Sess., 1994), c. 640, s.1; 1995, c. 171, s. 1; 1999-100, s. 1; 2001-22, 2002-43, ss. 1-5; (as to Article 3) city of Fayetteville: 1998-61; city of High Point: 1987, c. 327.

§ 128-24. Membership.

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

(1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. 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. 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.

(1a) Should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member; provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

(2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before 90 days following the date of participation in the Retirement System by such county, city or town: Provided, further, that employees of county social services and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

(3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.

(3a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.

(4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he

shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.

c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
2. The actuarial equivalent of the retirement benefits he previously received.

d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3).

(5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age

of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 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, 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 eligible former law enforcement officer.

b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 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 service 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 service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

b3. Deferred retirement allowance of members retiring on or after July 1, 1995. — 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. **(See note.)** Should a beneficiary who retired on an early or service retirement allowance be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or 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 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 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 restriction; 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.

(5a) Notwithstanding the provisions of paragraphs c and d of the subdivision (5) 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 a participating employer and beneficiaries last employed by a participating employer to this Retirement System on January 1, 1986, and who also was a contributing member of this Retirement System on January 1, 1986, 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 an early or service retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee by an employer participating in the Retirement System after January 1, 1986, becomes subject to the provisions of G.S. 128-24(5)c. and G.S. 128-24(5)d. on and after January 1, 1989.

(6) Employees of a sending agency participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 shall remain members entitled to all benefits of the System provided that the requirements of Article 10 of Chapter 126 are met;

provided further, that a member may retain membership status while serving as an assigned employee or employee on leave under the provisions of Article 10 of Chapter 126 for purposes of receiving the death benefit regardless of whether he and his employer are contributing to his account during the exchange period except that no duplicate benefits shall be paid. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1106, ss. 1, 2; 1985, c. 479, s. 196(d)-(g); c. 649, s. 2; 1987, c. 513, s. 1; c. 738, s. 38(a); 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(a), 7.31(a), 7.31(b); 1995, c. 507, s. 7.22(d); 2002-126, s. 28.13(b).)

Editor's Note. — Session Laws 2002-126, s. 28.13(c), provides, in part, that subsection (b) of Session Laws 2002-126, s. 28.13, which amended G.S. 128-24(5)c., does not apply during the 2002-2003 fiscal year to any person who was retired on or before September 1, 2002, and also had entered into any employment contract or commitment for some or all of that year.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 28.13(b), effective July 1, 2002, added "during the 12-month period immediately following the effective date of retirement or" in the first sentence of subdivision (5)c.

§ 128-26. Allowance for service.

(a) Each person who becomes a member during the first year of his employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him to that employer prior to the date of participation for which he claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when he first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States if the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he

submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the armed services of the United States up to the date he was first eligible to be separated or released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time he entered military service, and either of the following conditions is met:

(1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.

(2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

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

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

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

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

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and State Employees' Retirement System plus regular interest thereon from the

date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

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

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

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

(h1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits 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 subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained five years of prior and current membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(j) Repealed by Session Laws 1987, c. 617, s. 3.

(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

(1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose current membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of membership service, and retired members who complete five years of membership service prior

to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability 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 retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced 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 subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 128-24.

(j2) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

(1) For members who completed 10 years of prior and current membership service, and retired members who completed 10 years of prior and current membership service prior to retirement, and whose current membership began on or before January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of prior and current membership service, and retired members who complete five years of prior and current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability 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 retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced 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 subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance. Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each two years of service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(k) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the System's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after January 1, 2003, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (i) of this section.

(*l*) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers" Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting

actuary, plus 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Leaves of Absence Terminating On and After July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 128-21(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

(m) Omitted Membership Service. — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

(1) within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or

(2) after 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the average yield on the pension accumulation fund for the preceding calendar year; or

(3) after three years of the omission, by the payment of an amount 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service.

(n) Repealed by Session Laws 2002, ch. 153, s. 3, effective January 1, 2003.

(o) Credit at Full Cost for Federal Employment. — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(p) Part-Time Service Credit. —

(1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time employee of a participating employer as defined in G.S. 128-21(11) or G.S. 135-1(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 128-26(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year.

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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Under all requirements and conditions set forth in the preceding subdivision of this subsection, except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time employee, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time employee of an employer as defined in G.S. 128-21(11) if (i) the member terminates or has terminated employment in any capacity as an employee, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(q) Credit at Full Cost for Probationary Employment. — Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with an employer as defined in this Article when considered to be in a probationary or employer imposed waiting period status and thereby not regularly employed, between date of employment and date of membership service with the retirement system, provided that the employer or former employer of such a member has revoked this probationary employment or waiting period policy.

Provided, the member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. In no instance shall the amount payable be less than the contributions a member would have made during the employment plus four percent (4%) interest compounded annually.

Nothing contained in this subsection shall prevent an employer from paying all or part of the cost; and, to the extent paid by an employer, payments shall be credited to the Pension Accumulation Fund; and to the extent paid by a member, payments shall be credited to the Annuity Savings Fund; provided, however, an employer may not discriminate against any member or group of members in his employ in paying all or any part of this cost. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(r) Credit at Full Cost for Temporary Government Employment. — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for government employment when classified as a temporary employee subject to the conditions that:

(1) The member was employed by an employer as defined in G.S. 128-21(11) or G.S. 135-1(11);

(2) The member's temporary employment met all other requirements of G.S. 128-21(10), or G.S. 135-1(10) or (25);

(3) The member has completed five years or more of membership service;
(4) The member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
(5) The member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative fee to be determined 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(s) Credit at Full Cost for Employment Not Otherwise Creditable. — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in any other retirement system or plan, upon completion of five years of membership service by making a lump sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(t) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treat-

ment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(u) **(See note.)** Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1; 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6; c. 1110, s. 8; 1989, c. 255, ss. 1-10; c. 762, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 28; 1991, c. 753, s. 1; 1991 (Reg. Sess., 1992), c. 1017, s. 1; 1995, c. 507, s. 7.23D(a); 1998-71, ss. 1, 2; 1998-214, s. 1; 1999-158, s. 1; 2001-487, s. 82; 2002-71, s. 3; 2002-153, ss. 1, 2, 3.)

Editor's Note. —

Session Laws 2002-71, s. 9, provides, in part, that s. 3 of the act becomes effective January 1, 2003, except that G.S. 128-26(u), as enacted by s. 3, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection.

Session Laws 2002-153, s. 4.1, as amended by Session Laws 2002-159, s. 83, provides: "The Treasurer is authorized to increase the requirements and receipts for the operating budget of the Retirement Systems Division in the amount of two hundred forty-seven thousand seven hundred thirteen dollars ($247,713) for the fiscal year 2002-2003 and the fiscal year 2003-2004 to fund eight two-year time-limited positions to implement the provisions of this act."

Effect of Amendments. —

Session Laws 2002-71, s. 3, added subsections (t) and (u). See editor's note for effective date.

Session Laws 2002-153, ss. 1-3, effective January 1, 2003, rewrote subsection (i); added the last sentence in subsection (k); and repealed subsection (n).

OPINIONS OF ATTORNEY GENERAL

Effect of Purchase of Service Credits. — The purchase of prior credit service for the period of July 10, 1984 and the enrollment in November, 1984 of several public safety officers

would not give those officers five years' service standing to their credit as of August 12, 1989; therefore, they would not thereby have a right to receive their retirement benefits tax-free. See Opinion of Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Town of Chapel Hill, 2000 N.C. AG LEXIS 12 (10/2/2000).

§ 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.

(a2) Discontinued Service Retirement Allowance. — A member whose employment with a participating employer is involuntarily terminated as a result of a termination event as defined in this subsection may be allowed a discontinued service retirement allowance, provided that the discontinued service retirement allowance is approved by the terminated member's participating employer, and provided that reemployment with that participating employer is not available to the member at the time of the termination event. For purposes of this section, "termination event" means termination of employment as a result of (i) the participating employer's cessation of operations; (ii) the participating employer's dissolution; (iii) the merger of a participating employer with and into an unrelated entity, other than another participating employer; (iv) the acquisition of the participating employer by an unrelated entity, other than another participating employer; or (v) the determination by the participating employer that a reduction in force will accomplish economies in the participating employer's budget resulting from either the elimination of

a job and its responsibilities or from lack of funds to support the job. Final action approving the discontinued service retirement allowance for a terminated member by the member's participating employer shall be taken in an open meeting.

Upon the occurrence of a termination event, and subject to the provisions of this subsection, an unreduced discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 55 years of age. Alternatively, upon the occurrence of a termination event, a discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 50 years of age, reduced by one-fourth of one percent (¼ of 1%) for each month that retirement precedes the member's fifty-fifth birthday.

In cases in which a discontinued service retirement allowance is approved, the terminated member's employer shall be responsible for making a lump-sum payment to the Retirement System's Board of Trustees equal to the actuarial present value of the additional liabilities imposed upon the Retirement System, to be determined by the Retirement System's consulting actuary, as a result of the discontinued service retirement allowance, plus an administrative fee to be determined by the Board of Trustees. An employer shall not discriminate against any member or group of members employed by the employer in the approval or disapproval of a discontinued service retirement allowance.

(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 (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(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 (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(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 (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(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. 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 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 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-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 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(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, but Before July 1, 2001. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2001, 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 (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;

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 (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(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. 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).

(b19) Service Retirement Allowance of Member Retiring on or After July 1, 2001, But Before July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2001, but before July 1, 2002, 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. 128-27(b19)(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;

2. The service retirement allowance as computed under G.S. 128-27(b19)(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 eighty-one hundredths percent (1.81%) 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(b19)(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(b19)(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(b19)(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(b19)(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).

(b20) Service Retirement Allowance of Member Retiring on or After July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, 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-two hundredths percent (1.82%) 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(b20)(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;
   2. The service retirement allowance as computed under G.S. 128-27(b20)(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 eighty-two hundredths percent (1.82%) 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(b20)(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(b20)(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(b20)(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(b20)(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 $\frac{1}{120}$th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

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%

Period in Which Benefits Commenced	Percentage
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%
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:

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(b20)(1)b. or G.S. 128-27(b20)(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 (2 ½%) 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 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 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 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.

(zz) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in

accordance with subsection (k) of this section. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, 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, 2000, and June 30, 2001.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2001. — From and after July 1, 2001, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2001, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2001. This allowance shall be calculated on the allowance payable and in effect on June 30, 2001, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2001 General Assembly.

(bbb) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) 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, 2001, and June 30, 2002.

(ccc) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2002 Regular Session of the 2001 General Assembly. (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); 2001-424, ss. 32.22(d), 32.23(a), 32.23(b), 32.23(c), 32.23(d); 2001-435, s. 1; 2002-126, ss. 28.8(b), 28.9(e)-(h).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, ss. 28.8(b) and 29.9(e)-(f), effective July 1, 2002, twice inserted "but before July 1, 2002" following "July 1, 2001" in subsection (b19); added subsection (b20); substituted "G.S. 128-27(b20)(1)b. or G.S. 128-27(b20)(2)c." for "G.S. 128-27(b19)(1)b. or G.S. 128-27(b19)(2)c." in subdivision (m)(1)b; and added subsections (bbb) and (ccc).

§ 128-38.2. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 ½ years

of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (1989, c. 276, s. 2; 1993, c. 531, s. 4; 1995, c. 361, s. 3; 2002-71, s. 4.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 4 of the act is effective when the it becomes law (August 12, 2002), except that the changes in G.S. 128-38.2(b) become effective January 1, 2000.

Effect of Amendments. — Session Laws 2002-71, s. 4, added the third paragraph in subsection (a); in subsection (b), rewrote the first sentence, and added the last sentence; and rewrote subsection (d). See editor's note for effective date.

§ 128-38.3. Deduction for payment to certain employees' associations allowed.

Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of employers as defined in G.S. 128-21(11), may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. (2001-424, s. 32.31; 2002-126, s. 6.4(b).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 6.4(b), effective July 1, 2002, substituted "beneficiary" for "member" throughout the section.

Chapter 130A.

Public Health.

ARTICLE 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-2. Definitions.

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Commission" means the Commission for Health Services.

(1a) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1b) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "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.

(3a) "Isolation authority" means the authority to issue an order to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

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

(7a) "Quarantine authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to issue an order to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1; 1973, c. 476, s. 128; 1975, c. 751, s. 1; 1981, c. 130, s. 1; c. 340, ss. 1-4; 1983, c. 891, s. 2; 1989, c. 727, s. 141; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 631, s. 1; 1997-443, s. 11A.55; 1997-502, s. 2(a); 1997-502, s. 2(b); 2002-179, s. 4.)

Effect of Amendments. — Session Laws 2002-179, s. 4, effective October 1, 2002, added subdivisions (1a), (1b), (3a), (6a), and (7a).

Legal Periodicals. — For note that addresses the effect of United States Supreme Court decision on sodomy laws and the manner in which society may shape its characterization of Acquired Immune Deficiency Syndrome (AIDS) and homosexuality, see 66 N.C.L. Rev. 226 (1987).

Part 2. Remedies.

§ 130A-20. Abatement of an imminent hazard.

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.63; 2002-179, s. 6.)

Effect of Amendments. — Session Laws 2002-179, s. 6, effective October 1, 2002, rewrote subsection (a).

§ 130A-22. Administrative penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in

a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars ($1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
(7) The cost to the State of the enforcement procedures.
(8) If applicable, the size of the renovation and demolition involved in the violation.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars ($10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article

19A of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article.

(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environment and Natural Resources may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the adminis-

trative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1983, c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247; 1989, c. 742, s. 4; 1991, c. 691, s. 1; c. 725, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 11; 1993 (Reg. Sess., 1994), c. 686, s. 1; 1995, c. 504, s. 8; 1997-443, s. 11A.64; 1997-523, s. 2; 1998-215, s. 54(a); 2001-474, s. 21; 2002-154, s. 1.)

Effect of Amendments. — Session Laws 2002-154, s. 1, effective October 1, 2002, inserted the fifth sentence in subsection (a).

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.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(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; 2001-469, s. 2; 2002-179, s. 2(b).)

Administrative Rules Governing Sanitation of Hospitals, Nursing Homes, Rest Homes, and Other Institutions. — Session Laws 2002-160, ss. 1-6, with respect to certain administrative rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, (1) delayed the effective date for the rules, (2) provided for a field test of those rules, (3) authorized the Commission for Health Services to adopt temporary and permanent rules to amend those rules, and (4) authorized the Medical Care Commission to adopt temporary and permanent rules governing licensing of family care homes and homes for the aged and infirm.

Effect of Amendments. —

Session Laws 2002-179, s. 2(b), effective October 1, 2002, substituted "G.S. 130A-479" for "G.S. 130A-149" in subdivision (c)(10).

§ 130A-30. Commission for Health Services — Members; selection; quorum; compensation.

CASE NOTES

Cited in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-39. Powers and duties of a local board of health.

CASE NOTES

Rule-Making Powers. —

Although the county board of health could adopt rules more strict than those adopted at the state level to protect the public health, under G.S. 130A-39(b), its rules attempting to regulate swine farms more strictly than the state could not stand because they insufficiently expressed a rationale for the county's stricter regulation. Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

Part 2. Sanitary Districts.

§ 130A-48. Procedure for incorporating district.

A sanitary district shall be incorporated as follows. Either fifty-one percent (51%) or more of the resident freeholders within a proposed sanitary district or fifty-one percent (51%) or more of the freeholders within a proposed sanitary district, whether or not the freeholders are residents of the proposed sanitary district, may petition the county board of commissioners of the county in which all or the largest portion of the land of the proposed district is located. This petition shall set forth the boundaries of the proposed sanitary district and the objectives of the proposed district. For the purposes of this Part, the term "freeholder" shall mean a person holding a deed to a tract of land within the district or proposed district, and also shall mean a person who has entered into a contract to purchase a tract of land within the district or proposed district, is making payments pursuant to a contract and will receive a deed upon completion of the contractual payments. The contracting purchaser, rather than the contracting seller, shall be deemed to be the freeholder. The county tax office shall be responsible for checking the freeholder status of those persons signing the petition. That office shall also be responsible for confirming the location of the property owned by those persons. Upon receipt of the petition, the county board of commissioners, through its chairperson, shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the proposed district lies of the receipt of the petition. The chairperson shall request that the Department hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The Secretary and the chairperson of the county board of commissioners shall name a time and place within the proposed district to hold the public hearing. The chairperson of the county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county and also by publication at least once a week for four successive weeks in a newspaper published in the county. In the event the hearing is to be before a joint meeting of the county boards of commissioners of more than one county, or in the event the land to be affected lies in more than one county, publication and notice shall be made in each of the affected counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, the hearing may be continued at a time and place within the proposed district named by the Department. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1; 1965, c. 135; 1967, c. 24, s. 21; 1973, c. 476, s. 128; 1975, c. 536; 1983, c. 891, s. 2; 2002-159, s. 55(f).)

Effect of Amendments. — Session Laws 2002-159, s. 55(f), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, inserted the sixth and seventh sentences.

ARTICLE 4.

Vital Statistics.

§ 130A-93.1. Fees for vital records copies or search; automation fund.

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed fifteen dollars ($15.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars ($5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.

(2) A fee not to exceed fifteen dollars ($15.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section. (1991, c. 343, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 5; 1997-242, s. 2; 2002-126, s. 29A.18(a).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 29.28(a), effective November 1, 2002, substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" in subdivisions (a)(1) and (2).

§ 130A-118. Amendment of birth and death certificates.

(a) After acceptance for registration by the State Registrar, no record made in accordance with this Article shall be altered or changed, except by a request for amendment. The State Registrar may adopt rules governing the form of these requests and the type and amount of proof required.

(b) A new certificate of birth shall be made by the State Registrar when:

(1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of the person;

(2) Notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order or decree disclosing different or additional information relating to the parentage of a person;

(3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order or decree disclosing different or additional information relating to the parentage of a person; or

(4) A written request from an individual is received by the State Registrar to change the sex on that individual's birth record because of sex reassignment surgery, if the request is accompanied by a notarized statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery.

(c) A new birth certificate issued under subsection (b) may reflect a change in surname when:

(1) A child is legitimated by subsequent marriage and the parents agree and request that the child's surname be changed; or

(2) A child is legitimated under G.S. 49-10 and the parents agree and request that the child's surname be changed, or the court orders a change in surname after determination that the change is in the best interests of the child.

(d) For the amendment of a certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed fifteen dollars ($15.00) to be paid by the applicant.

(e) When a new certificate of birth is made, the State Registrar shall substitute the new certificate for the certificate of birth then on file, and shall forward a copy of the new certificate to the register of deeds of the county of birth. The copy of the certificate of birth on file with the register of deeds, if any, shall be forwarded to the State Registrar within five days. The State Registrar shall place under seal the original certificate of birth, the copy forwarded by the register of deeds and all papers relating to the original certificate of birth. The seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of the person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth. (1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1975, c. 556; 1977, c. 1110, s. 4; 1983, c. 891, s. 2; 2002-126, s. 29A.18(b).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 29A.18(b), effective November 1, 2002, substituted "fifteen dollars ($15.00)" for "seven dollars and fifty cents ($7.50)" in subsection (d).

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.

Editor's Note. —

Session Laws 2002-126, s. 29A.19, provides: "The Department of Health and Human Services shall charge a fee in the amount of ten

dollars ($10.00) for a laboratory test performed by the State Public Health Laboratory under the Newborn Screening Program pursuant to G.S. 130A-125. If the actual cost to perform the test exceeds the amount of the fee authorized under this section, then the Department may increase the fee in accordance with its authority under G.S. 130A-125(c) to cover the cost."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 6.

Communicable Diseases.

Part 1. In General.

§ 130A-133: Repealed by Session Laws 2002-179, s. 3, effective October 1, 2002.

§ 130A-143. Confidentiality of records.

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case;

(7) Release is made by the Department or a local health department to a court or a law enforcement official for the purpose of enforcing this Article or Article 22 of this Chapter, or investigating a terrorist incident using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce this Article or Article 22 of this Chapter, or when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the

disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS. (1983, c. 891, s. 2; 1987, c. 782, s. 13; 2002-179, s. 7.)

Effect of Amendments. — Session Laws 2002-179, s. 7, effective October 1, 2002, made a minor punctuation change in subdivision (6); rewrote subdivision (7); and inserted "federal" preceding "state or local" in subdivision (8).

§ 130A-145. Quarantine and isolation authority.

(a) The State Health Director and a local health director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the State Health Director or a local health director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines that a 10-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director or local health director must institute in superior court in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of

freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each. (1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 15; 2002-179, s. 5.)

Cross References. — As to detention of an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145, see G.S. 15A-401(b)(4), 15A-534.5. As to entitlement to counsel of indigent person in a proceeding involving limitation of freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145, see G.S. 7A-451(a)(17).

Effect of Amendments. — Session Laws 2002-179, s. 5, effective October 1, 2002, rewrote the section.

§ 130A-149: Recodified as G.S. 130A-479 by Session Laws 2002-179, s. 2, effective October 1, 2002.

Part 2. Immunization.

§ 130A-152. Immunization required.

(a) Every child present in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella. In addition, every child present in this State shall be immunized against any other disease upon a determination by the Commission that the immunization is in the interest of the public health. Every parent, guardian, person in loco parentis and person or agency, whether governmental or private, with legal custody of a child shall have the responsibility to ensure that the child has received the required immunization at the age required by the Commission. If a child has not received the required immunizations by the specified age, the responsible person shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.

(b) Repealed by Session Laws 2002-179, s. 10, effective October 1, 2002.

(c) The Commission shall adopt and the Department shall enforce rules concerning the implementation of the immunization program. The rules shall provide for:

(1) The child's age at administration of each vaccine;
(2) The number of doses of each vaccine;
(3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children;
(4) The procedures and practices for administering the vaccine; and
(5) Redistribution of vaccines provided to local health departments.

(c1) The Commission for Health Services shall, pursuant to G.S. 130A-152 and G.S. 130A-433, adopt rules establishing reasonable fees for the administration of vaccines and rules limiting the requirements that can be placed on children, their parents, guardians, or custodians as a condition for receiving vaccines provided by the State. These rules shall become effective January 1, 1994.

(d) Only vaccine preparations which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are approved for use by the Commission may be used.

(e) When the Commission requires immunization against a disease not listed in paragraph (a) of this section, or requires an additional dose of a vaccine, the Commission is authorized to exempt from the new requirement children who are or who have been enrolled in school (K-12) on or before the effective date of the new requirement. (1957, c. 1357, s. 1; 1971, c. 191; 1973, c. 476, s. 128; c. 632, s. 1; 1975, c. 84; 1977, c. 160; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 158; 1993, c. 321, s. 281(a); 2002-179, s. 10.)

Effect of Amendments. — Session Laws 2002-179, s. 10, effective October 1, 2002, repealed subsection (b).

§ 130A-157. Religious exemption.

If the bona fide religious beliefs of an adult or the parent, guardian or person in loco parentis of a child are contrary to the immunization requirements contained in this Chapter, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the college, university, school or facility without presenting a certificate of immunization. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 692, s. 2; 2002-179, s. 17.)

Effect of Amendments. — Session Laws 2002-179, s. 17, effective October 1, 2002, substituted "this Chapter" for "this Part" in the first sentence.

Article 8.

Sanitation.

Part 6. Regulation of Food and Lodging Facilities.

§ 130A-248. Regulation of food and lodging establishments.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of private homes offering bed and breakfast accommodations to eight or fewer persons per night, and rules governing the sanitation of bed and breakfast inns as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast inns.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;
(2) Requirements for:
a. Lighting and water supply;
b. Wastewater collection, treatment, and disposal facilities; and
c. Lavatory and toilet facilities, food protection, and waste disposal;
(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.
(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
(4) The methods of food preparation, transportation, catering, storage, and serving;
(5) The health of employees;
(6) Animal and vermin control; and
(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system.

(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.

(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

(b1) A permit shall expire one year after an establishment closes unless the permit is the subject of a contested case pursuant to Article 3 of Chapter 150B of the General Statutes.

(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership or lease of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health. Upon issuance of a new permit or a transitional permit for an establishment, any previously issued permit for an establishment in that location becomes void.

(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A pushcart or mobile food unit shall be operated in conjunction with a permitted restaurant.

(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of fifty dollars ($50.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33-⅓%) of the fees collected under this subsection may be used to support State health programs and activities.

(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of two hundred dollars ($200.00) for plan review of plans for prototype franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part.

(f) Any local health department may charge a fee not to exceed two hundred dollars ($200.00) for plan review by that local health department of plans for food establishments subject to this section that are not subject to subsection (e)

of this section. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities. No food establishment that pays a fee under subsection (e) of this section is liable for a fee under this subsection. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 438, s. 2; 1989, c. 551, ss. 1, 4; 1989 (Reg. Sess., 1990), c. 1064, s. 1; 1991, c. 226, s. 1; c. 656, ss. 1, 2; c. 733, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 7; 1993, c. 262, s. 2; c. 346, s. 1; c. 513, s. 13; 1995, c. 123, s. 13(a)-(d); c. 507, s. 26.8(b), (g); 1997-367, s. 1; 1997-443, s. 11A.118(a); 1997-479, s. 1; 2002-126, ss. 29A.15(a), 29A.16.)

Editor's Note. —

Session Laws 2002-126, s. 29A.15(b), provides: "The Legislative Research Commission may study the current program within the Department of Environment and Natural Resources regarding the regulation of food and lodging facilities to determine whether the annual fee paid by establishments under G.S. 130A-248(d), as amended by subsection (a) of this section, is sufficient for the State and local food, lodging, and institution sanitation programs and activities. The Legislative Research Commission shall report no later than the convening of the 2004 Regular Session of the 2003 General Assembly. This report shall include a recommendation as to whether the annual fee paid by establishments should remain at fifty dollars ($50.00) or should be changed and, if so, to what amount it should be changed in order to improve the State and local food, lodging, and institution sanitation programs and activities. This report shall include any legislative proposals needed to accomplish the Commission's recommendations."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, ss. 29A.15(a) and 29A.16, effective October 1, 2002, in subsection (d), substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" in the first sentence, and added "under this subsection" in the last sentence; and added subsections (e) and (f).

Article 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

CASE NOTES

Solid Waste. — Agency committed an error of law in its decision that a cigarette manufacturer's byproduct from its initial processing of the tobacco leaf, consisting of stems, scraps and dust, which it stored and later used to manufacture reconstituted tobacco, used in the production of its product, was not solid waste, under G.S. 130A-290(35) was an error of law. R.J. Reynolds Tobacco Co. v. N.C. Dep't of Env't & Natural Res., 148 N.C. App. 610, 560 S.E.2d 163, 2002 N.C. App. LEXIS 51 (2002), cert. denied, 355 N.C. 493, 564 S.E.2d 44 (2002).

Definition of solid waste in G.S. 130A-290(35) is broader than the federal definition of the same term in 42 U.S.C.S. § 6903(27). R.J. Reynolds Tobacco Co. v. N.C. Dep't of Env't & Natural Res., 148 N.C. App. 610, 560 S.E.2d 163, 2002 N.C. App. LEXIS 51 (2002), cert. denied, 355 N.C. 493, 564 S.E.2d 44 (2002).

Part 2. Solid and Hazardous Waste Management.

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4)a. **(Effective until September 30, 2003)** Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of ½ acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. A landfill for the disposal of demolition debris generated on the same parcel or tract of land on which the landfill is located that has a disposal area of one acre or less is exempt from the permit requirement of this section and rules adopted pursuant to this section, and shall be governed by G.S. 130A-301.2. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

G.S. 130A-294(a)(4)a. is set out twice. See notes.

(4)a. **(Effective September 30, 2003)** Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;

(4a) No permit shall be granted for any public or private sanitary landfill to receive solid non-radioactive waste generated outside the boundaries of North Carolina to be deposited, unless such waste has previously been inspected by the solid waste regulatory agency of that nation, state or territory, characterized in detail as to its contents and certified by that agency to be non-injurious to health and safety. The Commission shall adopt rules to implement this subsection.

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

a. The existing and projected population for such area;

b. The quantities of solid waste generated and estimated to be generated in such area;

c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;

d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and

e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) The Department is authorized to charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research

and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

The Commission shall adopt rules for financial responsibility to ensure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities, and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods. The rules may permit demonstration of financial responsibility through the use of a letter of credit, insurance, surety, trust agreement, financial test, or guarantee by corporate parents or third parties who can pass the financial test. The rules shall require that an owner or operator of a privately owned solid waste management facility demonstrate financial responsibility by a method or combinations of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for a period of not less than 30 years after closure even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b1)(1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:
   1. The population of the geographic area to be served by the sanitary landfill;
   2. The quantity of solid waste to be disposed of in the sanitary landfill; or
   3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

(2) Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk. Prior to the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing when sufficient public interest exists. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide adequate notice to the public of the public hearing and shall specify the procedure to be followed at the public hearing.

(3) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurte-

nances are located or to be located. A local government shall adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319 prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill. A franchise granted for a sanitary landfill shall include:

a. A statement of the population to be served, including a description of the geographic area.
b. A description of the volume and characteristics of the waste stream.
c. A projection on the useful life of the landfill.

(4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all

lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(b2) The Department may require an applicant for a permit under this Article to satisfy the Department that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent:

(1) Is financially qualified to carry out the activity for which the permit is required.

(2) Has substantially complied with the requirements applicable to any solid waste management activity in which the applicant has previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

(b3) An applicant for a permit under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Article, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that the permittee continues to be financially qualified.

(c) The Commission shall adopt and the Department shall enforce rules concerning the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

(1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous waste;

(1a) Establishing criteria for hazardous constituents, identifying the characteristics of hazardous constituents and listing particular hazardous constituents;

(2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;

(3) Proper labeling of hazardous waste containers;

(4) Use of appropriate containers for hazardous waste;

(5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;

(6) Proper transportation of hazardous waste;

(7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;

(8) Location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility;

(9) Plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste

facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;

(10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, financial responsibility (including requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee), training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;

(11) Monitoring by owners or operators of hazardous waste facilities;

(12) Inspection or copying of records required to be kept;

(13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;

(14) A permit system governing the establishment and operation of hazardous waste facilities;

(15) Additional requirements as necessary for the effective management of hazardous waste;

(16) The operator of the hazardous waste disposal facility shall maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Department shall determine what constitutes an adequate amount of insurance;

(17) The bottom of a hazardous waste disposal facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment; and

(18) The operator of a hazardous waste disposal facility shall make monthly reports to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(e) Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(f) Within 10 days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located and, if the facility is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to the issuance of a permit or an amendment of an existing permit the Secretary or his designee shall conduct a public hearing in the county, or in one of the counties in which the hazardous waste facility is proposed to be located or is located. The Secretary or his designee shall give notice of the hearing, and the public hearing shall be in accordance with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including statutes,

regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

(1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate;

(2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;

(3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;

(4) Local land uses;

(5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;

(6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;

(7) Availability and reliability of public utilities; and

(8) Availability of emergency response personnel and equipment.

(h) Rules adopted by the Commission shall be subject to the following requirements:

(1) Repealed by Session Laws 1989, c. 168, s. 20.

(2) Hazardous waste shall be treated prior to disposal in North Carolina. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste disposal facility.

(3) Any hazardous waste disposal facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the RCRA at the time the permit is issued.

(4) No hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.

(5) Repealed by Session Laws 2001-474, s. 23, effective November 29, 2001.

(6) The following shall not be disposed of in a hazardous waste disposal facility: ignitables as defined in the RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.

(7) Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.

(8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.

(9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.

(10) Prevention, reduction, recycling, and detoxification of hazardous wastes should be encouraged and promoted. Hazardous waste dis-

posal facilities and polychlorinated biphenyl disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation.

(i) The Department shall develop a comprehensive hazardous waste management plan for the State and shall revise the plan on or before 1 July of even-numbered years. The Department shall report to the Environmental Review Commission on or before 1 October of each year on the implementation of the comprehensive hazardous waste management plan. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of.

(j) The Commission may adopt rules for financial responsibility (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures, and for potential liability for sudden and nonsudden accidental occurrences), which may permit the use of insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. Any direct or indirect parent corporation or other parent entity of the operator of a commercial hazardous waste treatment facility shall be deemed to be a guarantor of payment by the operator for closure, monitoring, and corrective measures and for liability incurred by the operator arising from the operation of the commercial hazardous waste treatment facility. The Department may provide a copy of any filing to meet the financial responsibility requirements to the State Treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing, including recommended changes.

(k) Each person who generates hazardous waste who is required to pay a fee under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall submit to the Department at the time such fees are due, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

(*l*) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill.

(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(n) The Department shall encourage research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste. The Department may establish a waste information exchange for the State.

(o) The Department shall promote public education and public involvement in the decision-making process for the siting and permitting of proposed hazardous waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which

facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(p) The Department shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of waste management.

(q) The Secretary shall, at the request of the Governor and under the Governor's direction, assist with the negotiation of interstate agreements for the management of hazardous waste.

(r) The Commission shall, in accordance with the procedures set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific privilege license tax rates that localities may apply to waste management facilities in their jurisdiction.

(s) The Department is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility or hazardous waste disposal facility. The Department shall give 30 days notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to land or structures caused by these activities. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848; 1987 (Reg. Sess., 1988), c. 1111, s. 6; 1989, c. 168, ss. 15-22; c. 317; c. 727, s. 218(86); c. 742, s. 6; 1991, c. 537, s. 1; 1993, c. 86, s. 1; c. 273, s. 1; c. 365, s. 1; c. 473, ss. 1, 2; c. 501, s. 14; 1993 (Reg. Sess., 1994), c. 580, s. 1; c. 722, ss. 1, 2; 1995, c. 502, s. 1; c. 509, s. 70; 1995 (Reg. Sess., 1996), c. 594, ss. 6, 7; 1997-27, s. 2; 2001-357, s. 2; 2001-474, ss. 22, 23, 24, 25; 2002-148, s. 4.)

Effect of Amendments. —
Session Laws 2002-148, s. 4, effective October 9, 2002, rewrote subsection (i).

§ 130A-304. Confidential information protected.

OPINIONS OF ATTORNEY GENERAL

Determination of Confidentiality of Information. — Department of Environment and Natural Resources staff should review requests for information by determining whether any of the exemptions from disclosure authorized by the North Carolina Public Records Act apply to the information received or prepared by the department in the course of carrying out its duties and responsibilities under Article 9 of Chapter 130A, G.S. 130A-290 et seq. Department staff must also determine whether such information is subject to any of the exemptions from disclosure pursuant to the Freedom of Information Act (FOIA), either by identifying whether such information was received by a federal agency with the stipulation that it be kept confidential pursuant to a specific FOIA provision or by examining the relevant memorandum of agreement or similar document which should identify the types of documents that the federal agency expects to be treated as confidential pursuant to FOIA. Information at issue must acquire its confidential status pursuant to federal law. See opinion of Attorney General to Mr. Daniel McLawhorn, Office of General Counsel, Department of Environment and Natural Resources, 2001 N.C. AG LEXIS 1 (1/4/2001).

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

Editor's Note. —

Session Laws 2002-24, s. 2, provides: "Notwithstanding the provisions of Section 3.4 of S.L. 2001-440 to the contrary, rules adopted by the Environmental Management Commission pursuant to Section 3.4 of S.L. 2001-440 shall include a compliance schedule that requires existing small municipal waste combustion units to achieve final compliance with the rules on and after 1 December 2004. The Environmental Management Commission shall amend rules adopted pursuant to Section 3.4 of S.L. 2001-440 to conform to the requirements of this section."

Part 2B. Scrap Tire Disposal Act.

§ 130A-309.63. Scrap Tire Disposal Account.

(a) Creation. — The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. — The Department may use revenue in the Account only as authorized by this section.

(1) The Department may use up to fifty percent (50%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, the effort made by a unit of local government to ensure that only tires generated in the normal course of business in this State are provided free disposal, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it.

(2) The Department may use up to forty percent (40%) of the revenue in the Account to make grants to encourage the use of processed scrap tire materials. These grants may be made to encourage the use of tire-derived fuel, crumb rubber, carbon black, or other components of tires for use in products such as fuel, tires, mats, auto parts, gaskets, flooring material, or other applications of processed tire materials. These grants shall be made in consultation with the Department of Commerce, the Division of Pollution Prevention and Environmental Assistance of the Department, and, where appropriate, the Department of Transportation. Grants to encourage the use of processed scrap tire materials shall not be used to process tires.

(3) The Department may use revenue in the Account to support a position to provide local governments with assistance in developing and implementing scrap tire management programs designed to complete the cleanup of nuisance tire collection sites and prevent scrap tires generated from outside of the State from being presented for free disposal in the State.

(4) The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has

determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(c) Eligibility. — A unit of local government is not eligible for a grant for scrap tire disposal unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government for scrap tire disposal may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Repealed by Session Laws 2002-126, s. 12.5(b), effective July 1, 2002.

(e) Reporting. — The Department shall include in the report to be delivered to the Environmental Review Commission on or before 15 January of each year pursuant to G.S. 130A-309.06(c) a description of the implementation of the North Carolina Scrap Tire Disposal Act for the fiscal year ending the preceding 30 June. The description of the implementation of the North Carolina Scrap Tire Disposal Act shall include the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the reporting period, and the amount of revenue used for grants and to clean up nuisance tire collection sites. (1993, c. 548, s. 6; 1995 (Reg. Sess., 1996), c. 594, s. 23; 1997-209, ss. 1, 2; 2001-452, s. 3.4; 2002-126, s. 12.5(b).)

Editor's Note. — Session Laws 2001-424, s. 19.14, as amended by Session Laws 2002-126, s. 12.5(a), provides: "Notwithstanding the provisions of G.S. 130A-309.63, the Department of Environment and Natural Resources may use funds in the Scrap Tire Disposal Account that, pursuant to G.S. 130A-309.63(d), are to be used for the cleanup of scrap tire collection sites, to maintain and support a position for the 2001-2002 fiscal year to provide regulatory assistance to local governments to develop programs to prevent scrap tires from outside the State from being presented for free disposal and to complete the cleanup of nuisance tire collection sites."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 12.5(b), effective July 1, 2002, added subdivision (b)(1) and (2) designations; substituted "Pollution Prevention and Environmental Assistance" for "Environmental Assistance and Prevention" in subdivision (b)(2); added subdivisions (b)(3) and (4); and repealed former subsection (d) regarding cleanup of nuisance tire sites.

Part 3. Inactive Hazardous Sites.

§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.

(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

(1) Monitoring the inactive hazardous substance or waste disposal site;

(2) Developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;

(3) Approving an inactive hazardous substance or waste disposal site remedial action program for the site;
(4) Coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and
(5) Ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the Environmental Management Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:
(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and
(2) To implement the program within reasonable time limits specified in the order.

Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the Environmental Management Commission.

(e) For any removal or remedial action conducted entirely on-site under this Part, to the extent that a permit would not be required under 42 U.S.C. § 9621(e) for a removal or remedial action conducted entirely on-site under CERCLA/SARA, the Secretary may grant a waiver from any State law or rule that requires that an environmental permit be obtained from the Department. The Secretary shall not waive any requirement that a permit be obtained unless either the removal or remedial action is being conducted pursuant to G.S. 130A-310.3(c), 130A-310.5, or 130A-310.6, or the owner, operator, or other responsible party has entered into an agreement with the Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). The Secretary shall invite public participation in the development of the remedial action plan in the manner set out in G.S. 130A-310.4 prior to granting a permit waiver, except for a removal or remedial action conducted pursuant to G.S. 130A-310.5.

(f) In order to reduce or eliminate the danger to public health or the environment posed by an inactive hazardous substance or waste disposal 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 if the restrictions meet the requirements of this subsection. 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 determined as provided in subsection (d) of this section or pursuant to rules adopted under Chapter 150B of the General Statutes. 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 inactive hazardous substance or waste disposal site. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter 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. (1987, c. 574, s. 2; 1989, c. 727, s. 145; 1991, c. 281, ss. 1, 2; 1997-394, s. 1; 2002-154, s. 2.)

Effect of Amendments. — Session Laws 2002-154, s. 2, effective October 9, 2002, rewrote subsection (e).

§ 130A-310.11. Inactive Hazardous Sites Cleanup Fund created.

Editor's Note. — Session Laws 2002-126, s. 12.6(a), provides: "The Department of Environment and Natural Resources may use up to two million five hundred thousand dollars ($2,500,000) from the Inactive Hazardous Sites Cleanup Fund established in G.S. 130A-310.11 for the 2002-2003 fiscal year for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials."

Session Laws 2002-126, s. 12.6(b), provides: "Notwithstanding the provisions of G.S. 143-215.3A, the Department of Environment and Natural Resources also may use up to five hundred thousand dollars ($500,000) for the 2002-2003 fiscal year from the fees collected for water quality permits under G.S. 143-215.3D and credited to the Water Permits Fund if both of the following conditions are satisfied:

"(1) The detoxification and remediation of the landfill located in Warren County cannot be completed without funds in addition to those that are authorized for this purpose under subsection (a) of this section.

"(2) All other funds, including all contingency funds, available to the Department for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials have been spent or encumbered."

Session Laws 2002-126, s. 12.6(c), provides: "It is the intent of the General Assembly that the funds authorized under this section will be sufficient to complete the detoxification and remediation of this landfill, based on representations made to the General Assembly."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

ARTICLE 11.

Wastewater Systems.

§ 130A-338. Authorization for wastewater system construction required before other permits to be issued.

CASE NOTES

Cited in Tri-County Paving, Inc. v. Ashe County, 281 F.3d 430, 2002 U.S. App. LEXIS 2747 (4th Cir. 2002).

ARTICLE 14.

Dental Health.

§ 130A-367. Dental providers for problem access areas.

The State's dental public health program shall encourage the expansion of current educational and training programs for dentists, dental hygienists, and dental assistants targeted to serve citizens' unmet needs, particularly in the rural and low-income areas that have traditionally had problems in accessing dental care. The program shall also promote and encourage the recruitment of in-State and out-of-state private sector dental personnel to work in these dental health professional shortage areas. (2002-37, s. 1.)

Cross References. — As to issuance of limited volunteer dental license to practice dentistry in nonprofit health care facilities serving low-income populations, see G.S. 90-37.1.

Editor's Note. — Session Laws 2002-37, s. 12, made this section effective January 1, 2003.

Session Laws 2002-37, s. 11, contains a severability clause.

ARTICLE 21.

Advance Health Care Directive Registry.

§§ 130A-472 through 130A-474: Reserved for future codification purposes.

ARTICLE 22.

A Terrorist Incident Using Nuclear, Biological, or Chemical Agents.

§ 130A-475. Suspected terrorist attack.

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director is authorized to order any ofthe following:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.

(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals.

(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals. Nothing in this subdivision shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute, in superior court in Wake County or in the county in which the limitation is imposed, an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of biological, chemical or nuclear agents to others, and may apply such conditions to the limitation as the court deems reasonable and necessary.

If the State Health Director determines that a 10-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director must institute in superior court in the county in which the limitation is imposed, an action to obtain an order extending the period limiting the freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County. The court shall continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable and necessary, if it determines by the preponderance of the evidence, that additional limitation is reasonably necessary to prevent or limit the conveyance of biological,

chemical, or nuclear agents to others. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director reasonably suspects that there exists a public health threat that may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director shall notify the Governor and the Secretary of Crime Control and Public Safety. If the Secretary of Crime Control and Public Safety reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Secretary shall notify the Governor and the State Health Director.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter. (2002-179, s. 1.)

Cross References. — As to detention of an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145, see G.S. 15A-401(b)(4), 15A-534.5. As to entitlement to counsel of indigent person in a proceeding involving limitation of freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145, see G.S. 7A-451(a)(17).

Editor's Note. — Session Laws 2002-179, s. 22, made this Article effective October 1, 2002.

§ 130A-476. Access to health information.

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. Notwithstanding the foregoing, if a health care provider or unit of State or local government willfully does not disclose information pursuant to this subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The

Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) The State Health Director and a local health director may examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that pertain to a report authorized by subsection (a) or required by subsection (b) of this section.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review, or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a terrorist incident using nuclear, biological, or chemical agents. A court or law enforcement official or law enforcement officer who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the court or law enforcement official or law enforcement officer in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) The State Health Director shall develop a voluntary pilot program for hospitals and urgent care centers to provide emergency department data in order to assist the State Health Director with public health surveillance. A hospital or urgent care center that elects to participate in the program must provide all required emergency department data as a condition of participation in the program. Upon receipt of such data, the State Health Director shall remove from the entire data set the following direct identifiers of patients or of relatives, employers, or household members of patients: names; postal address information, other than town or city, state, and the first five digits of the zip code; geocode information; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators (URLs); Internet protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

(g) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any

other health care related facility, whether publicly or privately owned. (2002-179, s. 1.)

§ 130A-477. Abatement of public health threat.

If it is determined that a public health threat may exist because of the contamination of property caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director may order any action to abate that public health threat. To the extent that any owner, lessee, operator, or other person in control of the property is innocent of culpability in the creation of the public health threat, that person shall not be responsible for the costs of abating the public health threat. (2002-179, s. 1.)

§ 130A-478. Tort liability.

Article 31 of Chapter 143 applies to negligent acts committed by any officer, employee, involuntary servant or agent of the State acting pursuant to this Article. (2002-179, s. 1.)

§ 130A-479. Biological agents registry; rules; penalties.

(a) The Department shall establish and administer a program for the registration of biological agents. The biological agents registry shall identify the biological agents possessed and maintained by any person in this State and shall contain other information required under rules adopted by the Commission.

(b) The following definitions apply in this section:

(1) "Biological agent" means:

a. Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations.

b. Any genetically modified microorganisms or genetic elements from an organism on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, shown to produce or encode for a factor associated with a disease.

c. Any genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, or their toxic submits.

(2) "Person" means any association, business, corporation, facility, firm, individual, institution of higher education, organization, partnership, society, State agency, or other legal entity.

(c) The Commission shall adopt rules for the implementation of the registry program, as follows:

(1) Determining and listing the biological agents required to be reported under this section.

(2) Designating persons required to make reports and specific information required to be reported including time limits for reporting, form of reports, and to whom reports shall be submitted.

(3) Providing for the release of information in the registry to State and federal law enforcement agencies and the United States Centers for Disease Control and Prevention pursuant to a communicable disease investigation commenced or conducted by the Department, the Commission, or other state or federal law enforcement agency having investigatory authority, or in connection with any investigation involving release, theft, or loss of biological agents.

(4) Establishing a system of safeguards that requires persons possessing and maintaining biological agents subject to this section to comply with the same federal standards that apply to persons registered to possess the same agents under federal law.

(5) Establishing a process for persons that possess and maintain biological agents to alert appropriate authorities of unauthorized possession or attempted possession of biological agents. The rules shall designate appropriate authorities for receipt of alerts from these persons.

(d) Any person that possesses and maintains any biological agent required to be reported under this section shall report to the Department the information required by the Commission for inclusion in the biological agent registry.

(e) Except as otherwise provided in this section, information prepared for or maintained in the registry under this section shall be confidential and shall not be a public record under G.S. 132-1. The Department may, in accordance with rules adopted by the Commission, release information contained in the biological agent registry for the purpose of conducting or aiding in a communicable disease investigation. The Department shall cooperate with and may share information contained in the biological agent registry with the United States Centers for Disease Control and Prevention, and state and federal law enforcement agencies in any investigation involving the release, theft, or loss of a biological agent required to be reported under this section. Release of information from the registry as authorized under this subsection shall not render the information released a public record under G.S. 132-1. Release of information from the registry as authorized under this subsection also shall not render the information prepared for or maintained in the registry a public record under G.S. 132-1.

(f) The Department shall impose a civil penalty for a willful or knowing violation of this section in the amount of up to one thousand dollars ($1,000). Each day of a continuing violation shall be a separate offense. Any person wishing to contest a penalty shall be entitled to an administrative hearing in accordance with Chapter 150B of the General Statutes. (2001-469, s. 1; 2002-179, s. 2(a).)

Editor's Note. — Session Laws 2001-469, s. 3, made this section effective January 1, 2002.

Session Laws 2002-179, s. 2(a), effective October 1, 2002, recodified former G.S. 130A-149 as G.S. 130A-479.

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1A.

Control over Child Placing and Child Care.

Article 1.

Licensing of Facilities.

§ 131D-2. Licensing of adult care homes for the aged and disabled.

Editor's Note. —

Session Laws 2002-126, s. 10.10C, provides: "Notwithstanding any other provision of law to the contrary, the requirements of G.S. 131E-265 for nursing homes to conduct national criminal history record checks for employment positions other than those involving direct patient care shall become effective no earlier than January 1, 2004. Notwithstanding any other provision of law to the contrary, the requirements of G.S. 131D-2 for adult care homes to conduct national criminal records checks for all staff positions shall become effective no earlier than January 1, 2004."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 1A.

Control over Child Placing and Child Care.

§ 131D-10.3. Licensure required.

(a) No person shall operate, establish or provide foster care for children or receive and place children in residential care facilities, family foster homes, or adoptive homes without first applying for a license to the Department and submitting the required information on application forms provided by the Department.

(b) Persons licensed or seeking a license under this Article shall permit the Department access to premises and information required to determine whether the person is in compliance with licensing rules of the Commission.

(c) Persons licensed pursuant to this Article shall be periodically reviewed by the Department to determine whether they comply with Commission rules and whether licensure shall continue.

(d) This Article shall apply to all persons intending to organize, develop or provide foster care for children or receive and place children in residential child-care facilities, family foster homes or adoptive homes irrespective of such persons having applied for or obtained a certification, registration or permit to

carry on work not controlled by this Article except persons exempted in G.S. 131D-10.4.

(e) Unless revoked or modified to a provisional or suspended status, the terms of a license issued by the Department shall be in force for a period not to exceed 24 months from the date of issuance under rules adopted by the Commission.

(f) Persons licensed or seeking a license who are temporarily unable to comply with a rule or rules may be granted a provisional license. The provisional license can be issued for a period not to exceed six months. The noncompliance with a rule or rules shall not present an immediate threat to the health and safety of the children, and the person shall have a plan approved by the Department to correct the area(s) of noncompliance within the provisional period. A provisional license for an additional period of time to meet the same area(s) of noncompliance shall not be issued.

(g) In accordance with Commission rules, a person may submit to the Department documentation of compliance with the standards of a nationally recognized accrediting body, and the Department on the basis of such accreditation may deem the person in compliance with one or more Commission licensing rules.

(h) The Department shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

(1) Was the owner, principal, or affiliate of a licensable facility under Chapter 122C or Chapter 131D that had its license revoked until 60 months after the date of the revocation.

(2) Is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of Chapter 122C until 60 months after the date of the violation.

(3) Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C- 24.1(a) until 60 months after the date of reinstatement or restoration of the license.

(4) Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D until 60 months after the date of reinstatement or restoration of the license. (1983, c. 637, s. 2; 2002-164, s. 4.4.)

Effect of Amendments. — Session Laws 2002-164, s. 4.4, effective October 23, 2002, added subsection (h).

§ 131D-10.4. Exemptions.

OPINIONS OF ATTORNEY GENERAL

Abuse Occurring in County Operated Secure Detention Facility. — The Department of Social Services has the authority to investigate an abuse complaint (involving a juvenile) that allegedly occurred in a county operated secure detention facility that is licensed by the North Carolina Office of Juvenile Justice. See Opinion of Attorney General to Mr. Lowell L. Siler, Esq., Deputy County Attorney, County of Durham, 2000 N.C. AG LEXIS 17 (9/11/2000).

Chapter 131E.

Health Care Facilities and Services.

Article 2.

Public Hospitals.

Part 1. Municipal Hospitals.

§ 131E-6. Definitions.

CASE NOTES

Cited in Wells v. Cumberland County Hosp. Sys., — N.C. App. —, 564 S.E.2d 74, 2002 N.C. App. LEXIS 586 (2002).

§ 131E-7. General powers.

OPINIONS OF ATTORNEY GENERAL

The proposal of a county hospital system to lend money to a separately licensed acute care hospital was authorized by law. See opinion of Attorney General to Granger R. Barrett, Cumberland County Attorney, and Wilson Hayman, Poyner & Spruill, L.L.P., 2002 N.C. AG LEXIS 14 (2/19/02).

§ 131E-9. Governing authority of hospital facilities.

CASE NOTES

Cited in Wells v. Cumberland County Hosp. Sys., — N.C. App. —, 564 S.E.2d 74, 2002 N.C. App. LEXIS 586 (2002).

§ 131E-12. Public purposes.

CASE NOTES

Venue. — Venue of negligence suit against hospital authority was properly transferred to the county by which it was governed, pursuant to G.S. 1-77, providing for venue of actions against a public officer, despise the fact that the authority operated in multiple counties. Wells v. Cumberland County Hosp. Sys., — N.C. App. —, 564 S.E.2d 74, 2002 N.C. App. LEXIS 586 (2002).

§ 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.

OPINIONS OF ATTORNEY GENERAL

Sale of Vacant Property to Physicians. — A hospital authority would not be required to comply with this section if it sold vacant property to one or more physicians based upon a determination that the vacant property was not necessary, convenient, or related to the operation of any hospital facility owned by the authority. See opinion of Attorney General to Roger Lee Edwards, Attorney, 2000 N.C. AG LEXIS 25 (6/8/2000).

Part 2. Hospital Authority.

§ 131E-15. Title and purpose.

CASE NOTES

Venue. — Venue of negligence suit against hospital authority was properly transferred to the county by which it was governed, pursuant to G.S. 1-77, providing for venue of actions against a public officer, despise the fact that the authority operated in multiple counties. Wells v. Cumberland County Hosp. Sys., — N.C. App. —, 564 S.E.2d 74, 2002 N.C. App. LEXIS 586 (2002).

§ 131E-18. Commissioners.

OPINIONS OF ATTORNEY GENERAL

A county board of commissioners does not have the authority to increase the number of commissioners on a hospital authority located within the county. See opinion of Attorney General to William I. Millar, Attorney at Law, and Thomas S. Stukes, Smith Helms Mulliss & Moore, L.L.P., 1999 N.C. AG LEXIS 39 (12/21/99).

Hospital Authority Has Authority to Expand Number of Its Commissioners. — This section expressly grants the authority to expand the number of a hospital authority's commissioners to the hospital authority's commissioners themselves, rather than to the board of county commissioners; therefore, a resolution of a county board of commissioners which provided that the number of members to the board of commissioners of a hospital authority could not be changed except by resolution of the county board of commissioners was a nullity and had no force and effect. See opinion of Attorney General to Haywood Regional Medical Center, 1999 N.C. AG LEXIS 40 (12/21/99).

§ 131E-20. Boundaries of the authority.

CASE NOTES

Applicability. — Section 131E-20, concerning the territorial boundaries of a hospital authority, applies to hospital authorities organized pursuant to G.S. 131E-15 to 131E-39 (the Hospital Authorities Act). Wells v. Cumberland County Hosp. Sys., — N.C. App. —, 564 S.E.2d 74, 2002 N.C. App. LEXIS 586 (2002).

Venue. — Venue of negligence suit against hospital authority was properly transferred to the county by which it was governed, pursuant to G.S. 1-77, providing for venue of actions against a public officer, despise the fact that the authority operated in multiple counties. Wells v. Cumberland County Hosp. Sys., — N.C. App. —, 564 S.E.2d 74, 2002 N.C. App. LEXIS 586 (2002).

ARTICLE 5.

Hospital Licensure Act.

Part 5. Medical Review Committee.

§ 131E-95. Medical review committee.

(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "'Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about his testimony before the committee or any opinions formed as a result of the committee hearings.

(c) Information that is confidential and is not subject to discovery or use in civil actions under subsection (b) of this section may be released to a professional standards review organization that performs any accreditation or certification function. Information released under this subdivision shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and is not subject to discovery or use in any civil actions as provided under subsection (b) of this section, and the standards review organization shall keep the information confidential subject to that subsection. (1973, c. 1111; 1981, c. 725; 1983, c. 775, s. 1; 1999-222, s. 2; 2002-179, s. 19.)

Effect of Amendments. — Session Laws 2002-179, s. 19, effective October 1, 2002, inserted "an ambulatory surgical facility licensed under Chapter 131E of the General Statutes" in the first sentence of subsection (b).

Legal Periodicals. —

For recent development, "The Medical Peer Review Privilege After Virmani," see 80 N.C.L. Rev. 1860 (2002).

ARTICLE 9.

Certificate of Need.

§ 131E-184. Exemptions from review.

(a) Except as provided in subsection (b), the Department shall exempt from certificate of need review a new institutional health service if it receives prior written notice from the entity proposing the new institutional health service, which notice includes an explanation of why the new institutional health service is required, for any of the following:

(1) To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations.

(1a) To comply with State licensure standards.

(1b) To comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act.

(2) Repealed by Session Laws 1987, c. 511, s. 1.

(3) To provide data processing equipment.

(4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review.

(5) To replace or repair facilities destroyed or damaged by accident or natural disaster.

(6) To provide any nonhealth service facility or service.

(7) To provide replacement equipment.

(8) To acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition.

(9) To develop or acquire a physician office building regardless of cost, unless a new institutional health service other than defined in G.S. 131E-176(16)b. is offered or developed in the building.

(b) Those portions of a proposed project which are not proposed for one or more of the purposes under subsection (a) of this section are subject to certificate of need review, if these non-exempt portions of the project are new institutional health services under G.S. 131E-176(16).

(c) The Department shall exempt from certificate of need review any conversion of existing acute care beds to psychiatric beds provided:

(1) The hospital proposing the conversion has executed a contract with the Department's Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and/or one or more of the Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities to provide psychiatric beds to patients referred by the contracting agency or agencies; and

(2) The total number of beds to be converted shall not be more than twice the number of beds for which the contract pursuant to subdivision (1) of this subsection shall provide.

(d) In accordance with, and subject to the limitations of G.S. 148-19.1, the Department shall exempt from certificate of need review the construction and operation of a new chemical dependency or substance abuse facility for the purpose of providing inpatient chemical dependency or substance abuse services solely to inmates of the Department of Correction. If an inpatient chemical dependency or substance abuse facility provides services both to inmates of the Department of Correction and to members of the general public,

only the portion of the facility that serves inmates shall be exempt from certificate of need review. (1983, c. 775, s. 1; 1987, c. 511, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 37; 1993, c. 7, s. 7; 2001-424, s. 25.19(c); 2002-159, s. 41.)

Effect of Amendments. —
Session Laws 2002-159, s. 41, effective October 11, 2002, rewrote subsection (d).

Article 16.

Miscellaneous Provisions.

§ 131E-265. (See Editor's Note) Criminal history record checks required for certain applicants for employment.

Editor's Note. —
Session Laws 2002-126, s. 10.10C, provides: "Notwithstanding any other provision of law to the contrary, the requirements of G.S. 131E-265 for nursing homes to conduct national criminal history record checks for employment positions other than those involving direct patient care shall become effective no earlier than January 1, 2004. Notwithstanding any other provision of law to the contrary, the requirements of G.S. 131D-2 for adult care homes to conduct national criminal records checks for all staff positions shall become effective no earlier than January 1, 2004."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Chapter 132.

Public Records.

§ 132-1. "Public records" defined.

Local Modification. — Alamance: 1987 (Reg. Sess., 1988), c. 950, s. 1(c); Alleghany: 1991, c. 162, s. 1(c); Ashe: 1991, c. 163, s. 1(c); Burke: 1989, c. 422, s. 1(c); Caldwell: 1987, c. 472, s. 1(c); Chatham: 1993 (Reg. Sess., 1994), c. 642, s. 1(c); Chowan: 1989, c. 174, s. 1(c); Cleveland: 1989, c. 173, s. 1(c); Cumberland: 1993, ch. 413, s. 5; Davidson: 1993, c. 453, s. 1(c); Davie: 1989 (Reg. Sess., 1990), c. 928, s. 1(c); Duplin: 1987, c. 317, s. 1(c); Gaston: 1987, c. 618, s. 1(c); Guilford: 1993, c. 82, s. 1; 1995, c. 432, s. 1; Halifax: 1987, c. 377, s. 1(c); Henderson: 1987, c. 172, s. 5(c); Hertford: 1987 (Reg. Sess., 1988), c. 979, s. 1(c); Hyde: 1991, c. 230, s. 1(c); Lee: 1987, c. 538, s. 1(c); Lenoir: 1987, c. 561, s. 1(c); Lincoln: 1993, c. 549, s. 1; Martin: 1991, c. 80, s. 1(c); Mecklenburg: 1993, c. 82, s. 1; 1995, c. 432, s. 1; Mitchell: 1987, c. 141, s. 1(c); Nash: 1987, c. 32; 1993, c. 82, s. 1; 1993, c. 545; 1995, c. 432, s. 1; New Hanover: 1995, c. 432, s. 1; Pasquotank: 1987, c. 175, s. 1(c); Pender: 1987 (Reg. Sess., 1988), c. 970, s. 1(c) (repealed by 2001-439, s. 6.1, on effective date of a tax levied under the 2001 act); Pitt: 1987, c. 143, s. 1(c); 1993, c. 82, s. 1; 1993, ch. 410, s. 1; 1995, c. 432, s. 1; Rockingham: 1991, c. 322, s. 1(c); 1991 (Reg. Sess., 1992), c. 882; Rutherford: 1991, c. 577, s. 5(c); Wake: 1991, c. 594, s. 9; 1995, c. 458, s. 5; Washington: 1991 (Reg. Sess., 1992), c. 821; Wilson: 1987, c. 484, s. 1(c); Yancey: 1987, c. 140, s. 1(c); city of Albemarle: 1991 (Reg. Sess., 1992), c. 915 (repealed on effective date of a tax levied under 2001-434, ss. 6, 7, by the County of Stanly); city of Charlotte: 2000-26, s. 1; city of Conover: 1987, c. 319, s. 1; city of Elizabeth City: 1987, c. 175, s. 1(c); 2001, c. 227, s. 1; city of Greensboro: 1987, c. 51; 1989, c. 383, s. 1; 1993, c. 82, s. 1; 1995, c. 432, s. 1; city of Hickory: 1987, c. 319, s. 1; city of High Point: 1993, c. 82, s. 1; 1995, c. 432, s. 1; city of Kinston: 1993 (Reg. Sess., 1994), c. 648, s. 1(c); city of Thomasville: 1993, c. 453, s. 1(c); city of Wilmington: 1995, c. 432, s. 1; town of Blowing Rock: 1987, c. 171, s. 1(c); town of Boone: 1987, c. 170, s. 1(c); town of Cary: 1989 (Reg. Sess., 1990), c. 874, s. 1(c); town of Columbus: 1991, c. 632, s. 1(c); town of Garner: 1989, c. 660, s. 1(c); town of Hillsborough: 1993, c. 449, s. 1(e); town of Oriental: 1993 (Reg. Sess., 1994), c. 695, s. 1(c); town of Wake Forest: 1989, c. 604, s. 1(c); Averasboro Township: 1987, c. 142; village of Bald Head Island: 1991, c. 664, s. 2(c). (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. By virtue of Session Laws 2002-129, s. 1, city of Southport should be stricken from the main volume.

Cross References. — For the Address Confidentiality Program, see G.S. 15C-1 et seq. As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

CASE NOTES

What Must Be Made Available for Inspection. —

It is beyond argument that minutes of a city council's closed session are "public records" within the meaning of North Carolina's Public Records Law, G.S. 132-1 et seq. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Under G.S. 143-318.10, minutes of all official meetings, including closed sessions, are public records within meaning of Public Records Law, G.S. 132-1 et seq. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Cited in Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

OPINIONS OF ATTORNEY GENERAL

A governmental entity is not required to provide the public a means to monitor its 800 megahertz radio communications as such a communication is not a public record. See opinion of Attorney General to Mr. J. Mark Payne, Johnston County Attorney, 2002 N.C. AG LEXIS 3 (1/22/02).

§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information.

(a) Confidential Communications. — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. — Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. — Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(i) that the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

(ii) that is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

(iii) that is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311 and G.S. 153A-274, or other public entity providing utility services, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. — The actual address and telephone number of a program participant in the Address Confidentiality

Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes. (1975, c. 662; 1993, c. 485, s. 38; 1995 (Reg. Sess., 1996), c. 646, s. 21; 2001-473, s. 1; 2002-171, s. 7.)

Cross References. — For the Address Confidentiality Program, see G.S. 15C-1 et seq.

Effect of Amendments. — Session Laws 2002-171, s. 7, effective January 1, 2003, added "Address Confidentiality Program information" to the end of the section heading; and added subsection (d).

OPINIONS OF ATTORNEY GENERAL

Attorney-Client Communications to City on Personnel Matters. — Written attorney-client communications to a city (including the city manager and city council) on specific personnel matters related to an employee that are more than three years old, and which are confidential under G.S. 160A-168(a), are not public records; by its specific terms, G.S. 160A-168(a) supersedes the requirement in G.S. 132-1.1 that privileged attorney-client communications must be disclosed three years after they are received. See opinion of Attorney General to Mr. Grady Joseph Wheeler, Jr., Esq., Attorney, 2001 N.C. AG LEXIS 15 (5/30/2001).

§ 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 Office 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; 2002-159, s. 35(i).)

Effect of Amendments. — Session Laws 2002-159, s. 35(i), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History" in the last sentence of subsection (b).

OPINIONS OF ATTORNEY GENERAL

The Employment Security Commission was not required to replace confidential social security numbers with a non-identifying code in order to allow the analysis of data in the Common Follow-Up System without revealing confidential, personally identifiable information. See opinion of Attorney General to Mr. T.S. Whitaker, Deputy Chairman for Programs, Employment Security Commission of N.C., 1999 N.C. AG LEXIS 26 (9/20/99).

§ 132-6.2. Provisions for copies of public records; fees.

OPINIONS OF ATTORNEY GENERAL

A governmental entity is not required to record its 800 megahertz radio communications. See opinion of Attorney General to Mr. J. Mark Payne, Johnston County Attorney, 2002 N.C. AG LEXIS 3 (1/22/02).

Chapter 133.

Public Works.

Article 1.

General Provisions.

Article 1.

General Provisions.

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. Specifications may list one or more preferred brands as an alternate to the base bid in limited circumstances. Specifications containing a preferred brand alternate under this section must identify the performance standards that support the preference. Performance standards for the preference must be approved in advance by the owner in an open meeting. Any alternate approved by the owner shall be approved only where (i) the preferred alternate will provide cost savings, maintain or improve the functioning of any process or system affected by the preferred item or items, or both, and (ii) a justification identifying these criteria is made available in writing to the public. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1; 2002-107, s. 5; 2002-159, s. 64(c).)

Effect of Amendments. — Session Laws 2002-107, s. 5, effective September 6, 2002, deleted the former seventh sentence, which read: "If an architect, engineer, designer, draftsman or owner prefers a particular brand of material, then such brand shall be bid as an alternate to the base bid and in such case the base bid shall cite three or more examples of items of equal or equivalent design, which would establish an acceptable range for items of equal or equivalent design."

Session Laws 2002-159, s. 64(c), effective January 1, 2003, and applicable to bidding opportunities advertised on or after that date, inserted the seventh, eighth, ninth, and tenth sentences in the section, as amended by Session Laws 2002-107, s. 5.

§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1 and [G.S.] 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8; 2002-161, s. 11.1.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. — Session Laws 2002-161, s. 11.1, effective January 1, 2003, and applicable to contracts entered into on or after that date, substituted "Except for G.S. 133-1 and G.S. 133-1.1" for "Except for G.S. 133-1.1."

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.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in G.S. 135-8.

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(5) "Average final compensation" shall mean the average annual compensation of a member during the four consecutive calendar years of membership service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. In the event a member is or has been in receipt of a benefit under the provisions of G.S. 135-105 or G.S. 135-106, the compensation used in the calcula-

tion of "average final compensation" shall be the higher of compensation of the member under the provisions of this Article or compensation used in calculating the payment of benefits under Article 6 of this Chapter as adjusted for percentage increases in the post disability benefit.

(6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Chapter.

(7) "Board of Trustees" shall mean the Board provided for in G.S. 135-6 to administer the Retirement System.

(7a) "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee.

(8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in G.S. 135-4.

(9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.

(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be

allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above- described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions 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. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

(11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(11b) "Law-Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(12) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.

(13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4.

(14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System.

(15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.

(17) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under G.S. 135-4; provided, persons now employed by the Board of

Transportation shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to 1931.

(18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.

(19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7, subsection (b).

(20) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.

(23) "Service" shall mean service as a teacher or State employee as described in subdivision (10) or (25) of this section.

(24) "Social security breakpoint" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.

(25) "Teacher" shall mean any teacher, helping teacher, classroom teacher in a job-sharing position as defined in G.S. 115C-302.2(b) except for a beneficiary in that position, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee except for a classroom teacher in a job-sharing position, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt, the Board of Trustees, hereinbefore defined, shall determine whether any person is a teacher as defined in this Chapter. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "teacher" solely because the person holds a temporary or time-limited visa. Notwithstanding the foregoing, the term "teacher shall not include any nonimmigrant alien employed in elementary or secondary public schools (whether employed in a full-time, part-time, temporary, permanent, or substitute teacher position) and participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62.

(26) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 81/2; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2; 1983, c. 412, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 227; 1985, c. 649, s. 3; 1987, c. 738, ss. 29(a), 36(a); 1991, c. 51, s. 2; 1993 (Reg.

Sess., 1994), c. 769, s. 7.31(c); 1998-1, s. 4(g); 2001-424, s. 32.24(b); 2001-426, ss. 2, 3; 2001-513, s. 24; 2002-110, s. 1; 2002-126, ss. 28.6(b), 28.12(a); 2002-174, s. 2.)

Cross References. — As to the Board of Trustees of the North Carolina Public Employee Special Pay Plan, see G.S. 143B-426.41.

Editor's Note. —

Session Laws 2002-126, s. 28.12(b), provides: "This section is effective when it becomes law, provided any person who has been reemployed by the General Assembly on a permanent full-time basis prior to the effective date of this section may purchase credit for that service by returning any retirement allowance received as well as the employee contributions attributable to the service plus interest as determined by the Board of Trustees of the Retirement System. In addition, the employer must pay the employer contributions attributable to the service."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-180, ss. 12.1 to 12.9, establishes the Legislative Study Commission on the Teachers' and State Employees' Retirement System. The Commission is to study the Teachers' and State Employees' Retirement System, including establishing early retirement for State employees, the accumulation of vacation benefits as it relates to those who work eight-hour shifts and those who work 12-hour shifts, and other issues relating to solvency, benefits, or the financial health of the retirement system. The Commission is to submit a final written report of its findings and recommendations on or before the convening of the 2003 General Assembly. Upon filing its final report, the Commission shall terminate.

Effect of Amendments. —

Session Laws 2002-110, s. 1, effective July 1, 2002, added the last sentence in subdivision (25).

Session Laws 2002-126, s. 28.6(b), effective July 1, 2002, added the last sentence in subdivision (7a).

Session Laws 2002-126, s. 28.12(a), effective September 30, 2002, in the second sentence of subdivision (10), deleted "reemployed" preceding "beneficiaries," and added "who are reemployed on a temporary basis" at the end. See Editor's note for applicability.

Session Laws 2002-174, s. 2, effective January 1, 2003, in subdivision (25), as amended by Session Laws 2002-110, s. 1, inserted "classroom teacher in a job-sharing position as defined in G.S. 115C-302.2(b) except for a beneficiary in that position" near the beginning, and inserted "except for a classroom teacher in a job-sharing position" near the middle.

§ 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 Sys-

tem 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, 2004 — See note)** 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 during the 12-month period immediately following the effective date of retirement or 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%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity, except as a substitute teacher or a part-time tutor, with a public school for at least six 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, 2004)** 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 during the 12-month period immediately following the effective date of retirement or 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), which-

G.S. 135-3(8)c is set out twice. See notes.

ever 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); 2001-424, s. 32.25(a); 2002-126, ss. 28.10(a), (b), (d), 28.13(a).)

Subdivision (8)c Set Out Twice. — The first version of subdivision (8)c set out above is effective until June 30, 2004. The second version of subdivision (8)c set out above is effective June 30, 2004.

Editor's Note. —

Session Laws 2002-126, s. 28.10(a) amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subdivision (8)c, as amended by the 1998 act, from June 30, 2003, to June 30, 2004.

Session Laws 2002-126, s. 28.10(d) amended Session Laws 2001-424, s. 32.25(c) to change the expiration date affecting subdivision (8)c, as amended by the 2001 act, from June 30, 2003, to June 30, 2004.

Session Laws 2002-126, s. 28.10(a1), provides: "The State Treasurer shall seek a private letter ruling from the Internal Revenue Service that G.S. 135-3(8) c. could be amended from six months to two months without adverse affect on the tax qualification of the Teachers' and State Employees' Retirement System."

Session Laws 2002-126, s. 28.13(c), provides: "Subsections (a) and (b) of this section [which amended G.S. 135-3(8)c. and G.S. 128-24(5)c.] do not apply during the 2002-2003 fiscal year to any person who was retired on or before September 1, 2002, and also had entered into any employment contract or commitment for some or all of that year."

Session Laws 2002-126, s. 28.13(d), provides: "The State Treasurer shall seek a private letter ruling from the Internal Revenue Service relating to what constitutes a "bona fide termination of employment" and the period of time that a member of the Teachers' and State Employees' Retirement System must be separated from service before they can be reemployed either on a full-time or contract basis while continuing to receive retirement benefits."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 1998-212, s. 28.24(a), as amended by Session Laws 2002-126, s. 28.10(a), effective January 1, 1999, and expiring on June 30, 2004, added the second and third paragraphs in subdivision (8)c.

Session Laws 1998-217, s. 67, as amended by Session Laws 2002-126, s. 28.10(b), effective January 1, 1999, and expiring June 30, 2004, substituted "retired" for "probationary," and "G.S. 115C-325(a)(5a)" for "G.S. 115C-325-(a)(5)" in the present second paragraph of subdivision (8)c.

Session Laws 2001-424, s. 32.25(a), as amended by Session Laws 2002-126, s. 28.10(d) effective July 1, 2001, and expiring June 30, 2004, in the version of subdivision (8)c effective until June 30, 2004, substituted "six months" for "12 months" in two places and inserted "or a part-time tutor" in the second paragraph.

Session Laws 2002-126, s. 28.13(a), effective July 1, 2002, added "during the 12-month period immediately following the effective date of retirement or" in the first paragraph of subdivision (8)c.

CASE NOTES

Suspension of Benefits. —

Suspension of the retirement benefits of a retired judge who was appointed to state utilities commission, while he served on that commission, was proper even though the statute authorizing the suspension of a retired judge's pension only spoke of suspending the benefits of a retired judge who returned to judicial service, because the broader provisions of G.S. 135-3(8)(c), disallowing continued receipt of benefits by a contributor to the Teachers' and State Employees' Retirement System of North Carolina, applied to the judge. Wells v. Consolidated Judicial Ret. Sys., 354 N.C. 313, 553 S.E.2d 877, 2001 N.C. LEXIS 1098 (2001).

§ 135-4. Creditable service.

(a) Under such rules and regulations as the Board of Trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946, shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965, with credit for not less than 10 years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any member who retired on a service retirement allowance prior to July 1, 1965, who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the prior service.

(b) The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Service rendered by a classroom teacher in a job-sharing position shall be credited at the rate of one-half year for each regular school year of employment.

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

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the Board of Trustees may use for the purpose of this Chapter the compensation rates which will be determined by the average salary of the members for five years immediately

preceding the date this System became operative as the records show the member actually received. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

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

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

On and after July 1, 1973, a member whose account in the North Carolina Local Governmental Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the North Carolina Local Governmental Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

On or after July 1, 1979, a member who has obtained 60 months of aggregate service, or five years of membership service, as an employee of the North Carolina General Assembly, except legislators, participants in the Legislative Intern Program and pages, may make a lump sum payment together with interest, and an administrative fee for such service, to the Teachers' and State Employees' Retirement System of an amount equal to what he would have contributed had he been a member on his first day of employment.

On and after January 1, 1985, the creditable service of a member who was a member of the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by the State from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, shall include service that was creditable in the Law-Enforcement Officers' Retirement System; and membership service with that System shall be membership service with this Retirement System; provided, notwithstanding any provision of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law-Enforcement Officers' Retirement System shall not be diminished and may be purchased as creditable service with this Retirement System under the same conditions which would have otherwise applied.

(f) Armed Service Credit. —

(1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to

February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service.

(2) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from such armed services under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in such armed services up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.

(3) Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services.

(4) Under such rules as the Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.

(5) The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

(6) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or prior to July 1, 1981, and who make this purchase within three years

after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.

b. For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph a. of this subdivision, whose current membership began on or before July 1, 1981, but who did not or do not make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability 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 retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced 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 subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 135-18.1.

(g) Teachers and other State employees who served in the armed forces of the United States and who, after being honorably discharged, returned to the service of the State within a period of two years from date of discharge shall be credited with prior service for such period of service in the armed forces of the United States; and the salaries or compensations paid to such employees immediately before entering the armed forces shall be deemed to be the actual compensation rates of such teachers and State employees during said period of service.

(h) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 135-8(b)(5). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(i) Any person who became a member after June 30, 1947, and before July 1, 1955, and did not subsequently withdraw his contributions may, prior to his retirement, increase his creditable service to the extent of the period of time from the date he became a "teacher or employee" as the terms are defined in this Chapter to the date he became a member, but not exceeding three months immediately preceding membership, provided that he makes an additional contribution in one lump sum equal to five per centum (5%) of the compensation he received for the aforesaid period of time plus regular interest thereon from the date he became a member to the date of payment.

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

(j1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits 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 subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(k) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or G.S. 135-5(f) or the rules and regulations of the Law-Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal. These provisions shall apply equally to retired members who had attained five years of membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

Notwithstanding any provision to the contrary, a law enforcement officer who was transferred from the Law Enforcement Officers' Retirement System to

this Retirement System pursuant to Article 12C of Chapter 143 of the General Statutes and withdrew his accumulated contributions prior to January 1, 1985, in accordance with G.S. 128-27(f) or G.S. 135-5(f) for non-law enforcement service and who has five years or more of membership service standing to his credit may repay in a total lump sum the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal(s). The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(*l*) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(*l*1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

(1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or before July 1, 1981, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose current membership began on or before July 1, 1981, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability 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 retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced 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 subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each two years of current membership service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(m) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after July 1, 2001, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (k) of this section.

(n) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(o) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(p) Credit for prior temporary State employment. — Notwithstanding any other provision of this Chapter, a member may purchase service credit for temporary State employment upon completion of 10 years of membership service and subject to the condition that the member had been classified as a temporary employee for more than three years. Each employer shall certify to the Board of Trustees that an employee is eligible to purchase this service credit prior to the member making payment. Payment for the service credit shall be in a single lump sum based upon the amount the member would have contributed if he had been properly classified as a permanent employee and been a member of this retirement system.

(p1) Part-Time Service Credit. —

(1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time teacher or employee of an employer as defined in G.S. 135-1(11) or G.S. 128-21(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 135-4(b), the Board of Trustees shall fix and

determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Under all requirements and conditions set forth in the preceding subdivision of this subsection (p1), except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time teacher or employee of the State, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time teacher or employee of the State if (i) the member terminates or has terminated employment in any capacity as a teacher or employee of the State, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(3) Under all the requirements and conditions set forth in subdivision (1) of this subsection, except for the condition that part-time service rendered when a full-time student in pursuit of a degree or diploma in a degree-granting program is not eligible for purchase, any member with five or more years of membership service standing to the member's credit may purchase creditable service for service rendered as a part-time teacher or employee of the State if that service was rendered on a permanent part-time basis and required at least 20 hours of service per week.

(q) Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 135-3(6), may purchase membership service credits of such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 135-8(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum.

(r) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting

actuary, plus 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Leaves of Absence Terminating On and After July 1, 1983, but before January 1, 1988. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, but before January 1, 1988, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

(3) Leaves of Absence Terminating On and After January 1, 1988. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon or before a return to service on and after January 1, 1988, shall be due and payable to the Annuity Savings Fund within six months from return to service and shall be a lump sum amount equal to the employee percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. For members electing to make this payment, the member's employer which granted the leave of absence, or the member's employer upon a return to service, or both, shall make a matching lump sum payment to the Pension Accumulation Fund within six months from return to service equal to the employer percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. Such purchases of creditable service are applicable only when members have membership service credits within 30 days prior to the leave of absence and within 12 months following the leave of absence and such membership service is creditable service at the time of purchase. Notwithstanding any other provision of this subdivision, the cost to a member and to a member's employer or former employer or both employers whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof that the payment is made after the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

(s) Credit at Full Cost for Temporary Employment. — In addition to the provisions of subsection (p) above, any member may purchase creditable service for State employment when classified as a temporary teacher or employee subject to the conditions that the:

(1) Member was employed by an employer as defined in G.S. 135-1(11) or G.S. 128-21(11);
(2) Member's temporary employment met all other requirements of G.S. 135-1(10) or (25), or G.S. 128-21(10);
(3) Member has completed five years or more of membership service;
(4) Member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
(5) Member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative expense fee to be determined 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

The provisions of this subsection shall also apply to the purchase of creditable service for State employment when classified as a permanent hourly employee in accordance with G.S. 126-5(c4).

(t) Credit at Full Cost for Local Government Employment. — Any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in the North Carolina Local Governmental Employees' Retirement System upon completion of five years of membership service by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(u) Any member who was a wildlife protector who elected to become a member of the Law Enforcement Officers' Retirement System pursuant to Chapter 837 of the 1971 Session Laws by the transfer of accumulated contributions from this Retirement System to the Law Enforcement Officers' Retirement System and who has not subsequently applied for and received a return of accumulated contributions shall be entitled to creditable service for the service as a non-law enforcement officer forfeited as a result of the transfer pursuant to Chapter 837 of the 1971 Session Laws.

(v) Omitted Membership Service. — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as

defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

(1) Within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or

(2) After 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the average yield on the pension accumulation fund for the preceding calendar year; or

(3) After three years of the omission, by the payment of an amount 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 post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service.

(w) Credit at Full Cost for Federal Employment. — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the

provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt.

(x) Repealed by Session Laws 2001-424, s. 32.32(c), effective July 1, 2001.

(y) A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be granted creditable service for each month that the member is eligible for and for which a benefit is paid under the provisions of G.S. 135-105 and G.S. 135-106; provided, however, that in no instance shall a member be granted creditable service under this subsection if creditable service is earned or credited for the same month in this retirement system or any other retirement system administered by the State.

(z) Credit at Full Cost for Leave Due to Extended Illness. — Any member in service with five or more years of membership service standing to his credit may purchase creditable service for periods of interrupted service while on leave without pay status due to the member's illness or injury, excluding leave due to maternity, provided that any single such interrupted service shall have included such period of time during which the member failed to earn at least two months membership service, by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(aa) Credit at Full Cost for Maternity Leave. — Notwithstanding other provisions of this Chapter, any member in service with five or more years of credited membership service may purchase creditable service for periods of service which were interrupted due to parental leave, pregnancy or childbirth, or involuntary administrative furlough due to a lack of funds to support the position by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Creditable service purchased under this subsection may not exceed six months per parental leave, pregnancy or childbirth, or involuntary administrative furlough due to a lack of funds to support the position. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes 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.

(bb) Credit at Full Cost for Probationary Local Government Employment. — Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with any local employer as defined in G.S. 128-21(11) when considered to be in a probationary or employer-imposed waiting period status, between the date of employment and the date of membership service with the Local Governmental Employees' Retirement System, provided that the former employer of such a member has revoked this probationary employment or waiting period policy.

The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes 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.

(cc) Credit for Employment in Charter School Operated by a Private Nonprofit Corporation. — Any member may purchase creditable service for any employment as an employee of a charter school operated by a private nonprofit corporation whose board of directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon completion of five years of membership service after that charter school employment by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection 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.

(dd) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the

foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(ee) **(See note)** Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 11/2; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262; 1965, c. 780, s. 1; c. 924; 1967, c. 720, s. 3; 1969, c. 1223, ss. 3, 4; 1971, c. 117, ss. 9, 10; c. 993; 1973, c. 241, s. 2; c. 242, s. 1; c. 667, s. 2; c. 737, s. 1; c. 816, s. 1; c. 1063; c. 1311, ss. 1-5; 1975, c. 205, s. 2; c. 875, s. 47; 1977, cc. 317, 790; 1979, c. 826; c. 866, s. 2; c. 867; c. 972, s. 3; 1981, c. 557, s. 3; c. 636, s. 1; c. 1116, s. 1; 1981 (Reg. Sess., 1982), c. 1396, s. 4; 1983, c. 533, s. 1; c. 725; 1983 (Reg. Sess., 1984), c. 1030; c. 1034, ss. 230, 231; c. 1045, ss. 1, 2; 1985, c. 401, ss. 1, 2; c. 407, s. 1; c. 479, s. 193; c. 512; c. 530; c. 649, ss. 1, 4; c. 749, s. 1; 1987, c. 533, s. 1; c. 717, s. 2; c. 738, s. 29(b); c. 809, s. 2; c. 821; c. 825; 1987 (Reg. Sess., 1988), c. 1088, ss. 1-4; c. 1103; c. 1110, s. 9; 1989, c. 255, ss. 11-20; c. 762, s. 3; 1991 (Reg. Sess., 1992), c. 1017, s. 2; c. 1029, s. 1; 1995, c. 507, s. 7.23D(b); 1998-71, ss. 3, 4; 1998-190, s. 1; 1998-212, s. 9.14A(c); 1998-214, s. 2; 1999-71, s. 1; 1999-158, s. 2; 2001-424, ss. 32.28(a), 32.32(a), 32.32(b), 32.32(c); 2002-71, s. 5; 2002-153, s. 4; 2002-174, s. 3.)

Editor's Note. —

Session Laws 2002-71, s. 9, provides, in part, that s. 5 of the act becomes effective January 1, 2003, except that G.S. 135-4(ee), as enacted by s. 5, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection.

Session Laws 2002-153, s. 4.1, as amended by Session Laws 2002-159, s. 83, provides: "The Treasurer is authorized to increase the requirements and receipts for the operating budget of the Retirement Systems Division in the amount of two hundred forty-seven thousand seven hundred thirteen dollars ($247,713) for the fiscal year 2002-2003 and the fiscal year 2003-2004 to fund eight two-year time-limited positions to implement the provisions of this act."

Effect of Amendments. —

Session Laws 2002-71, s. 5, added subsections (dd) and (ee). See editor's note for contingency and effective date.

Session Laws 2002-153, s. 4, effective January 1, 2003, rewrote subsection (k).

Session Laws 2002-174, s. 3, effective January 1, 2003, added the last sentence in subsection (b).

§ 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 (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(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 (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(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 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(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 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(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. 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).

(b18) Service Retirement Allowance of Members Retiring on or After July 1, 2000, but Before July 1, 2002. — Upon retirement from service in accordance

with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2002, 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).

(b19) Service Retirement Allowance of Members Retiring on or After July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, 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-two hundredths percent (1.82%) 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(b19)(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(b19)(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-two hundredths percent (1.82%) 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(b19)(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(b19)(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(b19)(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(b19)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 $\frac{1}{120}$ 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(b19)(1)b. or G.S. 135-5(b19)(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%
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
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.

(iii) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, 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, 2000, and June 30, 2001.

(jjj) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) 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, 2001, and June 30, 2002.

(kkk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase granted by act of the 2002 Regular Session of the 2001 General Assembly. (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); 2001-424, s. 32.22(a); 2002-126, ss. 28.8(a), 28.9(a)-(d).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, ss. 28.8(a), 28.9(a)-(d), effective July 1, 2002, in subsection (b18), twice inserted "but before July 1, 2002" following "July 1, 2000"; added subsection (b19); substituted "G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c." for "G.S. 135-5(b18)(1)b. or G.S. 135-5(b18)(2)c."in subdivision (m)(1)b.; and added subsections (jjj) and (kkk).

§ 135-18.7. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 ½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1,

1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (1989, c. 276, s. 3; 1993, c. 531, s. 6; 1995, c. 361, s. 1; 2002-71, s. 6.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 6 of the act is effective when it becomes law (approved August 12, 2002), except that the changes in G.S. 135-18.7(b) become effective January 1, 2000.

Effect of Amendments. — Session Laws 2002-71, s. 6, added the last paragraph in subsection (a); in subsection (b), rewrote the first sentence, and added the last sentence; and rewrote subsection (d). See editor's note for effective date.

§ 135-18.8. Deduction for payments to certain employees' or retirees' associations allowed.

Any beneficiary who is a member of a domiciled employees' or retirees'

association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. (1998-212, s. 9.24(a); 1999-237, s. 23; 2002-126, s. 6.4(c).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 6.4(c), effective July 1, 2002, substituted "beneficiary" for "member" throughout the section.

Article 3.

Other Teacher, Employee Benefits; Child Health Benefits.

Part 2. Administrative Structure.

§ 135-39. Board of Trustees established.

(a) There is hereby established the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan.

(a1) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall consist of nine members.

(b) Three members shall be appointed by the Governor. Of the initial members, one shall serve a term to expire June 30, 1983, and two shall serve terms to expire June 30, 1984. Subsequent terms shall be for two years. Vacancies shall be filled by the Governor. Of the members appointed by the Governor, one shall be either:

(1) An employee of a State department, agency, or institution;

(2) A teacher employed by a North Carolina public school system;

(3) A retired employee of a State department, agency, or institution; or

(4) A retired teacher from a North Carolina public school system.

(c) Three members 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. Of the initial members, two shall serve terms expiring June 30, 1983, and one shall serve a term expiring June 30, 1984. Vacancies shall be filled in accordance with G.S. 120-122.

(d) Three members 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. Of the initial members, two shall serve terms expiring June 30, 1983, and one shall serve a term expiring June 30, 1984. Vacancies shall be filled in accordance with G.S. 120-122.

(d1) Repealed by Session Laws 1985, c. 732, s. 60.

(e) The Governor shall have the power to remove any member appointed by him under subsection (b). The General Assembly may remove any member appointed under subsections (c) or (d).

(f) The members of the Board of Trustees shall receive one hundred dollars ($100.00) per day, except employees eligible to enroll in the Plan, whenever the full Board of Trustees holds a public session, and travel allowances under G.S.

138-6 when traveling to and from meetings of the Board of Trustees or hearings under G.S. 135-39.7, but shall not receive any subsistence allowance or per diem under G.S. 138-5, except when holding a meeting or hearing where this section does not provide for payment of one hundred dollars ($100.00) per day.

(g) Repealed by Session Laws 2002-126, s. 28.16(a), effective October 1, 2002, and applicable to appointments and reappointments made on and after that date.

(h) No member of the Board of Trustees may serve more than three consecutive two-year terms.

(i) Meetings of the Board of Trustees may be called by the Executive Administrator, the Chairman, or by any three members. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 1; 1985, c. 732, ss. 2-5, 8, 11, 42, 59, 60; 1985 (Reg. Sess., 1986), c. 1020, s. 1; 1987, c. 857, s. 2; 1995, c. 490, s. 56; 2002-126, s. 28.16(a).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 28.16(a), effective October 1, 2002, and applicable to appointments and reappointments made on and after that date, in subsection (b), added "Of the members appointed by the Governor, one shall be either:" at the end, and deleted the former second paragraph, which read: "The member appointed by the Governor to serve a term beginning July 1, 1985, shall be an employee enrolled in the Plan. Any successor to such member shall also be an employee enrolled in the Plan."; added subdivisions (b)(1) to (4); deleted the second paragraph of subsection (c), which read: "One of the members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives may be a retired employee enrolled in the Plan."; deleted the second paragraph of subsection (d), which read: "One of the members appointed by the General Assembly upon the recommendation of the President of the Senate for a term beginning July 1, 1985, shall be an employee enrolled in the Plan. Any successor to such member shall also be an employee enrolled in the Plan."; and deleted former subsection (g), which read: "No State employee, member of the General Assembly, State officer, or anyone who is receiving benefits under the Plan or who is eligible to receive benefits under the Plan or who provides services, equipment or supplies under the Plan shall be eligible for membership on the Board of Trustees, except for the designated employees and retired employee appointed under subsections (b) through (d) of this section, provided that such designated persons may not serve on the executive committee."

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.

(a2) A classroom teacher in a job-sharing position as defined in G.S. 115C-302.2(b) shall be eligible for coverage under the Plan, on a partially contributory basis, subject to the provisions of G.S. 135-40.3. If these employees elect to participate in the Plan, the employing unit shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual employees shall pay the balance of the total noncontributory premiums not paid by the employing unit.

(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). Election of coverage under this subdivision shall be made within 90 days after the termination of coverage provided under 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; 2001-487, s. 86(a); 2002-174, s. 4.)

Effect of Amendments. —
Session Laws 2002-174, s. 4, effective January 1, 2003, added subsection (a2).

§ 135-40.4. Benefits in general.

OPINIONS OF ATTORNEY GENERAL

The State Employees' Comprehensive Major Medical Plan is exempt from the requirements of Article 3C of Chapter 143, G.S. 143-64.20 et seq., with respect to contracts to assist the plan in negotiating preferred provider networks. See opinion of Attorney General to Jack W. Walker, Executive Administrator, Teachers' & State Employees' Comprehensive Major Medical Plan, 2001 N.C. AG LEXIS 38 (8/23/01).

§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).

The benefits provided in this section are subject to a deductible of three hundred fifty dollars ($350.00) per covered individual to an aggregate maximum of one thousand fifty dollars ($1,050) per employee and child(ren) or employee and family coverage contract per fiscal year and are payable on the basis of eighty percent (80%) by the Plan and twenty percent (20%) by the covered individual up to a maximum of one thousand five hundred dollars ($1,500) out-of-pocket per fiscal year. The aggregate maximum out-of-pocket required of individuals covered by this section shall not be more than four thousand five hundred dollars ($4,500) per employee and child(ren) or employee and family coverage contract per fiscal year.

(1) In-Hospital Benefits. — The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodations, including bed, board and general nursing care, but not to exceed the charge for semiprivate room or ward accommodations, or the rate negotiated for the Plan. Under the DRG reimbursement system, the coinsurance shall be based on the lower of the DRG amount or charges.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

a. Intensive and cardiac nursing care.

b. All recognized drugs and medicines for use in the hospital.

c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.
d. Clinical and pathological laboratory examinations.
e. Electrocardiograms and electroencephalograms.
f. Physical, speech, and occupational therapy.
g. Intravenous solutions.
h. Oxygen and oxygen therapy, plus the use of equipment.
i. Dressings, ordinary splints, plaster casts and sterile supplies.
j. Use of operating, delivery, recovery and treatment rooms and equipment.
k. Routine nursery charges, if the mother is eligible to receive maternity benefits.
l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.
m. Devices or appliances surgically inserted within the body.
n. Processing and administering of blood and blood plasma.
o. Children are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.

p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.
q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual.

When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.

r. Repealed by Session Laws 1991, c. 427, s. 31.
s. The use of nebulizers when authorized as medically necessary by the attending physician.

(2) Limitations and Exclusions to In-Hospital Benefits. —
a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.
b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at eighty percent (80%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.
c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.
d. Hospitalization for custodial, adult care or sanitarium care, or rest cures, is not covered.
e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.
f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical commu-

nity, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Immediately following an emergency or unscheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for the admission's length of stay before any in-hospital benefits are allowed under G.S. 135-40.8(a). Failure to secure certification, or denial of certification, shall result in a penalty of fifty percent (50%) of the eligible expenses up to five hundred dollars ($500.00) per admission and the denial of services that were not medically necessary or appropriate, as determined by the Claims Processor. Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees. Inpatient hospital admission and length of stay certifications required by this subdivision do not apply to inpatient admissions outside of the United States. While approval certification for inpatient admissions is required to be initiated by the admitting physician, the employee or individual covered by the Plan shall be responsible for insuring that the required certification is secured. Failure to secure certification for inpatient hospitalization shall not result in a penalty to the employee or individual when approval would have been given if requested. Denial of services under this subsection shall be done only after notification of the Plan member of his or her personal financial responsibility for such services.

g. Repealed by Session Laws 2001-253, s. 1(o), effective July 1, 2001.

(3) Skilled Nursing Facility Benefits. — The Plan will pay benefits in a skilled nursing facility licensed under applicable State laws for not more than 100 days per fiscal year for the same reason, as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital. Plan allowances for total daily charges may be negotiated but will not exceed the daily semiprivate hospital room rate as determined by the Plan.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

a. The services are medically required to be given on an inpatient basis because of the covered individual's need for medically necessary skilled nursing care on a continuing daily basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services,

b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor and the patient requires continual hospital confinement without the care and treatment of the skilled nursing facility, and

c. Approved in advance by the Claims Processor.

For facilities not qualified for delivery of services covered by the benefits of Title XVIII of the Social Security Act (Medicare), neither the Plan nor any of its members shall be billed or held liable by such facilities for charges that otherwise would be covered by Medicare.

(4) Outpatient Benefits. — The Plan pays for services rendered in the outpatient department of a hospital, in a doctor's office, in an ambulatory surgical facility, or elsewhere as determined by the Executive Administrator, as follows:

a. Accidental injury: All covered services. Dental services are excluded except for oral surgery specifically listed in subsection (5)c. of this section.

b. Operative procedures.

c. All hospital services for radiation therapy, treatment by use of x-rays, radium, cobalt and other radioactive substances.

d. Pathological examinations of tissue removed by resection or biopsy. Routine Pap smears are not covered by this subdivision.

e. Charges for diagnostic x-rays, clinical laboratory tests, and other diagnostic tests and procedures such as electrocardiograms and electroencephalograms.

No benefits are provided in this subdivision for screening examinations and routine physical examinations to assess general health status in the absence of specific symptoms of active illness, routine office visits or for doctor's services for diagnostic procedures covered under surgical benefits.

(5) Surgical Benefits. — The Plan pays the usual, customary and reasonable charges for covered surgical services as follows:

a. Surgery: Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term "standard services and operations" includes the following organ transplants: liver, heart, corneal, bone marrow, lung, heart-lung, pancreas, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees may limit the Plan's reimbursement for selected organ transplants to amounts that would otherwise be allowed in accordance with G.S. 135-40.4.

b. Anesthesia: Administration of general, spinal block or local anesthesia. Covered services include pre- and postoperative visits, the administration of the anesthetic, fluids and/or blood provided by the anesthesiologist and incidental to the anesthesia, and necessary drugs and materials provided by the anesthesiologist. No benefits are provided for administration of local anesthesia or for anesthesia administered by the operating surgeon or surgical assistant(s).

c. Oral Surgery: Services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors

and lesions of the mouth, treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure. Developmental and congenital orthognathic surgery procedures will be covered under the Plan, provided such surgery is medically necessary, is the only method of treatment which will correct the patient's deformity, is not performed for cosmetic reasons, and is approved in advance by the Claims Processor on the basis of the surgeon's documentation that the correction of the deformity is medically necessary for the maintenance of good physical health.

d. Maternity Care: Independent operative procedures in connection with pregnancy, such as: manipulative obstetrical delivery, delivery by Caesarean section, removal of ectopic pregnancy, dilation and curettage. Benefits for manipulative obstetrical delivery include use of forceps and/or episiotomy. No benefits are provided for antepartum or postpartum care, except for direct surgical procedures of delivery and surgical treatment.

e. Surgical Assistants: Services of an assistant surgeon when medical judgment requires the services of an assistant surgeon and no hospital-employed doctor in training is available.

f. Multiple Procedures: When multiple or bilateral surgical procedures are performed by the same doctor through separate incisions or approaches during the same session, the surgical benefits will be the greater UCR allowance, plus fifty percent (50%) of the lesser UCR allowance. Anesthesia benefits will be the greater UCR allowance.

When multiple surgical procedures are performed by the same doctor through the same incision or operative approach, the surgical benefits are limited to the procedure which has the highest UCR allowance.

When a surgical procedure is performed in two or more stages, the surgical benefit for the entire procedure is the same as it would be were the procedure performed in one stage (except where otherwise provided in the benefit schedule). This limitation does not apply to anesthesia benefits.

g. Cleft Palate: Notwithstanding G.S. 135-40.6(6)a and G.S. 135-40.7(11), medical treatment and care needed by an individual born with cleft palate, including specialized dental and orthodontic care necessitated by the congenital condition.

h. Reconstructive Breast Surgery: Reconstructive breast surgery resulting from a mastectomy. The coverage shall include all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. As used in this sub-subdivision, (i) "mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer or breast disease; (ii) "reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. "Reconstructive breast surgery" also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast. Coverage described under this sub-subdivision shall not be denied on the basis that the coverage is for cosmetic surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without

regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(6) Limitations and Exclusions to Surgical Benefits. —

a. No benefits are provided for dental prostheses such as crowns, or dentures; orthodontic care; operative restoration of teeth (fillings); dental extractions (whether impacted or not impacted); apicoectomies; treatment of dental caries, gingivitis, or periodontal diseases by gingivectomies or other periodontal surgery; vestibuloplasties, alveoplasties, removal of exostosis and tori preparatory to fitting of dentures; correction of malocclusion by orthognathic surgery or other procedures by repositioning of bone tissue except as permitted pursuant to G.S. 135-40.6(5)c; removal of cysts incidental to apicoectomies or extraction of teeth.

b. Cosmetic surgery or surgery solely for beautifying purposes is not covered, except for procedures related to injury sustained while the individual is continuously covered under the Plan.

c. If a covered individual is admitted for medical and surgical treatment for the same condition, by the same doctor, either medical or surgical care may be paid, whichever is greater, but not both.

d. When a covered individual is admitted for medical treatment and during the hospital admission is subsequently referred to another doctor for surgery, medical benefits are provided for hospital days prior to the date of referral.

e. If during the hospital admission for necessary medical treatment, surgery is provided for a wholly distinct and unrelated condition, both medical and surgical benefits are payable, however, the same doctor may not be paid both medical and surgical benefits provided on the same day.

f. If during hospital admission for necessary medical treatment, a covered individual receives related surgical procedures such as paracentesis, biopsy, endoscopy, operative preparation for x-ray examination, or other diagnostic procedures for which benefits are applicable under the surgical benefits section of the Plan, both medical and surgical benefits are payable.

g. No benefits are provided for concurrent co-attending medical and surgical care by two or more doctors for the same condition other than as provided above.

h. No benefits will be payable for surgical procedure specifically listed by the American Medical Association or the North Carolina Medical Association as having no medical value.

i. No benefits are payable for organ transplants not listed in G.S. 135-40.6(5)a, nor will benefits be payable for surgical procedures or organ transplants determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor to be experimental.

j. No benefits are payable for radial keratotomy surgical procedures or for services to correct vision when performed in lieu of the use of corrective lenses.

(7) Medical Benefits. —

a. Services of Doctors. — The Plan pays the usual, reasonable and customary charges for covered inpatient medical (nonsurgical) services. Services are covered if the individual is hospital-confined and is eligible for hospitalization benefits as described in this section. Benefits are provided for exactly the same number of days as the individual is entitled to under this section, except that

medical benefits are provided on both the day of admission and the day of discharge.

In the event a covered individual is treated by two or more co-attending doctors during the same hospital confinement for a medical (nonsurgical) condition, benefits are limited to payment for services provided by the primary attending doctor, except where need is established for supplementary skills for treatment of separate and distinct diagnoses or conditions.

Home, office, and skilled nursing facility visits including (i) charges for injected medications, (ii) inpatient care by attending medical doctors, radiologists, pathologists, and consultants during such time as hospital benefits are paid under any section of this Plan, (iii) care in the outpatient department of a hospital, and (iv) administration of shock therapy (drug or electric) including the services of anesthesiologists provided on an office or hospital outpatient basis for treatment of acute psychotic reaction or severe depression.

b. Consultations. — Consultation services are provided when requested by attending doctor and the consultation is necessary in conjunction with and directly related to care and treatment of the condition for which admitted. No benefits are provided for staff consultation required by hospital rules and regulations. When a covered individual is admitted for oral surgery, a single consultation allowance will be provided for medical examination and pre-anesthesia evaluation.

c. Newborn Care. — When a child is eligible at birth, benefits are provided for treatment of illness, injury, prematurity, or congenital condition as a registered inpatient. When delivery is by Caesarean section, a single consultation allowance will be provided for standby, resuscitation, and infant care in the operating room provided by a doctor other than the operating surgeon.

When a mother receives maternity benefits under the Plan for a child's delivery, benefits are provided for examination and supervision of a normal newborn infant.

d. Repealed by Session Laws 1991, c. 427, s. 31.

(8) Other Covered Charges. —

a. Repealed by Session Laws 1999-237, s. 28.28(a), effective January 1, 2000.

b. Private Duty Nursing: Services of licensed nurses (not immediate relatives or members of the participant's household or private duty nursing used in lieu of or as a substitute for hospital staff nurses) ordered by the attending doctor for a condition requiring skilled nursing services. Private Duty Nursing ordered must be approved in advance by the Claims Processor as medically necessary. Allowances for Private Duty Nursing shall not exceed the lesser of the Plan's usual, customary and reasonable allowances or ninety percent (90%) of the daily semiprivate rate at skilled nursing facilities as determined by the Plan.

c. Home Health Agency Services: Services provided in a covered individual's home, when ordered by the attending physician and hospital or skilled nursing facility confinement would be required for the patient without such treatment and cannot be readily provided by family members. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:

1. Services of a registered nurse (RN); or
2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
3. Services of a home health aide which are an adjunct to or extension of concurrent medically necessary skilled services under the supervision of a RN, limited to four hours a day.

Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Claims Processor. Plan allowances for home health services shall be limited to licensed or Medicare certified home health agencies and shall not exceed ninety percent (90%) of the skilled nursing facility semiprivate rates as determined by the Plan, or charges negotiated by the Plan.

d. Licensed Ambulance Service: Local ambulance transportation:
   1. To or from a hospital for inpatient care or outpatient accident care;
   2. From a hospital to the nearest facility able to provide needed services not available at the transferring hospital; or
   3. From a hospital to a skilled nursing facility.

   The word "local" means ambulance transportation of not more than 50 miles unless the Claims Processor authorizes ambulance transportation beyond this distance.

e. Prosthetic and Orthopedic Appliances and Durable Medical Equipment: Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, not more than three hundred fifty dollars ($350.00) for therapeutic shoes for diabetes and other high-risk conditions, and other prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the Claims Processor and agreements to rent or purchase shall be between the Claims Processor and the supplier of the appliance.

   For the purposes of this subdivision, the term "durable medical equipment" means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Claims Processor, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final.

f. Dental Services: Oral surgery, including extraction of teeth, necessitated because of medical treatment. Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has

been diagnosed. Benefits for temporomandibular joint (TMJ) disfunction appliance therapy are limited to cases where the TMJ disfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Claims Processor.

Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair.

g. Medical Supplies: Colostomy bags, catheters, dressings, oxygen, syringes and needles, and other similar supplies.

h. Blood: Transfusions including cost of blood, plasma, or blood plasma expanders.

i. Physical Therapy: Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, licensed professional physiotherapist, or certified physical therapy assistant. No benefits are provided for eye exercises or visual training.

j. Inhalation Therapy: When provided by a doctor, hospital, or other organization.

k. Speech Therapy: Speech therapy provided by certified speech therapist.

l. Cataract Lenses: Cataract lenses prescribed as medically necessary for aphakia persons, including charges for necessary examinations and fittings. Benefits will be limited to one set of cataract lenses every 24 months for persons 18 years of age or older, and one set of cataract lenses every 12 months for persons less than 18 years of age.

m. Cardiac Rehabilitation: Charges not to exceed the lesser of one thousand eight hundred dollars ($1,800) or 90 days per fiscal year. Coverage is limited to patients with Coronary Artery Bypass Graft (CABG), status/post myocardial infarction, Percutaneous Transliminal Coronary Angioplasty (PTCA) or stent, valve replacement, heart transplant, or chronic and disabling angina provided such services are provided within six months of the qualifying event and in a medically supervised facility fully certified by the North Carolina Department of Health and Human Services.

n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143. Maximum benefits for x-rays, manipulations, and modalities shall be two thousand dollars ($2,000) per fiscal year.

o. Foot Surgery: Foot surgery on bones and joints.

p. Outpatient Diabetes Self-Care Programs: Charges, not to exceed three hundred dollars ($300.00) per fiscal year, when determined to be medically necessary by an attending physician and approved by the Executive Administrator and Claims Processor as meeting the standards of the National Diabetes Advisory Board for patients with a medical history of diabetes, provided such charges are incurred in a medically supervised facility.

q. Necessary medical services provided to terminally ill patients by duly licensed hospice organizations, when directed by the attending physician and approved in advance by the Claims Processor and the Executive Administrator.

r. Occupational Therapy: Recognized forms of occupational therapy provided by a doctor, hospital, licensed professional occupational therapist, or certified occupational therapy assistant to restore fine motor skills for the resumption of bodily functions.

s. Routine Diagnostic Examinations: Allowable charges for routine diagnostic examinations and tests, including Pap smears, 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. 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.

t. Repealed by Session Laws 1995, c. 507, s. 7.24(c).

(9) Limitations and Exclusions to Other Covered Charges. — No benefits are available under this section of the Plan until full utilization is made of similar benefits available under other sections of this Plan. No benefits will be payable for:

a. Private duty nursing provided by an immediate relative or member of the covered individual's household; or private duty nursing used in lieu of or as a substitute for hospital staff nurses;

b. Dental care except as covered under subsection (8)f and other dental services covered by the surgical benefits section of this Plan, subsection (5)c of this section;

c. Foot care except in connection with services covered by the surgical or inpatient medical benefits section of this Plan, subsections (1) and (5) of this section;

d. Repealed by Session Laws 1991, c. 427, s. 29.

e. Expenses incurred in the event a covered individual is a bed patient in a hospital, or skilled nursing facility on the effective date of coverage, so long as the covered individual remains so confined;

f. Eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons), hearing aids, braces for teeth, dental plates or bridges or other dental prostheses, air-conditioners, vaporizers, humidifiers, mattresses (other than as supplied with a hospital bed) and specially built shoes (other than attached to artificial limbs or orthopedic braces, and other than therapeutic shoes for diabetes or other high-risk conditions);

g. The difference between charges made by doctors and the UCR allowance for covered benefits, and the coinsurance expenses required under this Plan;

h. Habit forming drugs to support drug dependency;

i. Any other services not specifically outlined in this Plan.

(10) Coverage for Services of Advanced Practice Registered Nurses. — Notwithstanding any other provision of this section or the Plan,

benefits shall be payable for services performed by an advanced practice registered nurse subject to the following limitations:

a. The service performed is within the nurse's lawful scope of practice;
b. The Plan provides benefits for identical services performed by other licensed health care providers;
c. The service is not performed while the nurse is a regular employee in an office of a licensed physician;
d. The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and
e. Nothing in this subdivision is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this subdivision.

For purposes of this subdivision, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or a nurse midwife.

(11) Coverage for Physician Services Provided by Physician Assistants. — Notwithstanding any other provision of this section or the Plan, benefits shall be payable for physician services performed by a duly licensed physician assistant subject to the following limitations:

a. The service performed is within the lawful scope of practice of the physician assistant in accordance with rules adopted by the North Carolina Medical Board, pursuant to G.S. 90-18.1, or is within the scope of practice of a physician assistant licensed or certified in and acting pursuant to laws and rules applicable in the area where the service is provided;
b. The plan currently provides reimbursement for identical services performed by other licensed health care providers;
c. The reimbursement is made to the physician, clinic, agency, or institution employing the physician assistant; and
d. Nothing in this subdivision authorizes payment to more than one provider for the same service.

As used in this subdivision, a "duly licensed physician assistant" is a physician assistant as defined by G.S. 90-18.1.

(12) Coverage for services of Clinical Pharmacist Practitioners. — Notwithstanding any other provision of this section or the Plan, benefits shall be payable for services performed by a Clinical Pharmacist Practitioner subject to the following limitations:

a. The service performed is within the Clinical Pharmacist Practitioner's limitations pursuant to G.S. 90-18.4.
b. The Plan currently provides reimbursement for identical services provided by other health care providers.
c. The reimbursement shall be at the discretion of the Executive Administrator regarding services covered and compensation.
d. The reimbursement is made to the Clinical Pharmacist Practitioner.
e. Nothing in this subdivision authorizes payment to more than one provider for the same service. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 8-14, 21.3, 21.5, 21.9; 1983 (Reg. Sess., 1984), c. 1110, s. 12; 1985, c. 192, ss. 2, 3, 6, 6.1, 11, 16-17; c. 732, ss. 1, 14, 15, 20-22, 27-29, 31-33, 35, 65, 66; 1985 (Reg. Sess., 1986), c. 1020, ss. 4, 11-15, 20, 23; 1987, c. 282, ss. 23, 24; c. 857, ss. 15-18; 1989, c. 752, s. 22(g)-(k); c. 770, s. 32; 1991, c. 427, ss. 14, 15,

21-29, 31, 37, 38, 41; 1993, c. 464, s. 6; 1995, c. 507, ss. 7.24(b), (c), 7.26, 7.27, 7.28B; c. 535, s. 28; 1996, 2nd Ex. Sess., c. 18, s. 28.24; 1997-312, s. 5; 1997-443, s. 11A.118(a); 1997-512, ss. 3, 5, 7, 8, 10, 11, 36-38(a); 1999-210, s. 7; 1999-237, s. 28.28(a); 2001-253, ss. 1(f), 1(g), 1(h), 1(i), 1(j), 1(k), 1(o), 1(p); 2001-487, s. 86(b); 2002-126, s. 28.17.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 28.17, effective July 1, 2002, added subdivision (12).

Article 4.

Consolidated Judicial Retirement Act.

§ 135-56.3. Repayments and Purchases.

(a) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(b) **(See note)** Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service

pursuant to the provisions of this Article, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. (2002-71, s. 7.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 7 of the act becomes effective January 1, 2003, except that G.S. 135-56.3(b), as enacted by s. 7, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection.

§ 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.

(v) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, 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, 2000, and June 30, 2001.

(w) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) 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, 2001, and June 30, 2002. (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); 2001-424, s. 32.22(b); 2002-126, s. 28.8(c).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 28.8(c), effective July 1, 2002, added subsection (w).

§ 135-74. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 1/2 years of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of

substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (1989, c. 276, s. 4; 1993, c. 531, s. 8; 1995, c. 361, s. 2; 2002-71, s. 8.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 8 of the act is effective when it becomes law (August 12, 2002), except that the changes in G.S. 135-74(b) become effective January 1, 2000.

Effect of Amendments. — Session Laws 2002-71, s. 8, added the third paragraph in subsection (a); in subsection (b), rewrote the first sentence, and added the last sentence; and rewrote subsection (d). See editor's note for effective date.

§ 135-75. Deduction for payments to certain employees' or retirees' associations allowed.

Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. (2002-126, s. 6.4(e).)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 135-76: Reserved for future codification purposes.

Article 6.

Disability Income Plan of North Carolina.

§ 135-100. Short title and purpose.

Editor's Note. — Session Laws 2002-180, ss. 14.1 to 14.9, establishes a State Disability Income Plan Study Commission to study the plan design, funding and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 to determine what changes, if any, should be made to the Plan, including what changes would enhance its efficiency and reduce its cost. The Commission is to submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than December 31, 2003.

Chapter 136.

Roads and Highways.

Article 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18.5A. Purple Heart Memorial Highway.

Interstate Highway 95 in North Carolina is designated as the "Purple Heart Memorial Highway" to pay tribute to the many North Carolinians who have been awarded the Purple Heart medal after being wounded or killed in action against the enemy. (2002-86, s. 2(a).)

Editor's Note. — Session Laws 2002-86, s. 2(b), provides: "The Department of Transportation shall, with the assistance of the Military Order of the Purple Heart and the Division of

Veterans Affairs, design and place appropriate signage on Interstate Highway 95 at suitable locations, consistent with State and federal regulations, near the South Carolina and Virginia borders and at the intersection of Interstate Highway 40, implementing Section 2(a) of this act."

Session Laws 2002-86, s. 2(c), provides: "The Department of Transportation shall calculate the costs of designing and placing the signs required by Section 2(b) of this act, and the Military Order of the Purple Heart shall pay those costs to the Department prior to the erection of the signs."

Session Laws 2002-86, s. 3, made this section effective August 22, 2002.

§ 136-18.5B. Dale Earnhardt Highway.

The Board of Transportation shall designate State Highway 136 in Iredell and Cabarrus counties as State Highway 3, which shall be known as the "Dale Earnhardt Highway". (2002-170, s. 4.)

Editor's Note. — This section was enacted as G.S. 136-18.5.1 and was redesignated as G.S. 136-18.5B at the direction of the Revisor of Statutes.

Session Laws 2002-170, s. 4, made this section effective October 23, 2002.

Session Laws 2002-170, s. 5, provides: "State Highway 3 in Currituck County shall be designated as State Highway 136."

§ 136-27.2. Relocation of county-owned natural gas lines located on Department of Transportation right-of-way.

The Department of Transportation shall pay the nonbetterment cost for the relocation of county-owned natural gas lines, located within the existing State highway right-of-way, that the Department needs to relocate due to a State highway improvement project. (2002-126, s. 26.18(a).)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 26.18(b), provides: "The Department of Transportation is directed to use monies appropriated to the Department to relocate county-owned natural gas lines located on Department of Transportation right-of-way."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over one million two hundred thousand dollars ($1,200,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of

Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is one million two hundred thousand dollars ($1,200,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities.

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1; 1997-196, s. 1; 1999-25, ss. 2, 3; 2001-424, ss. 27.9(a), 27.9(b); 2002-151, s. 1.)

Effect of Amendments. — Session Laws 2002-151, s. 1, effective October 9, 2002, substituted "one million two hundred thousand dollars ($1,200,000)" for "eight hundred thousand dollars ($800,000)" in subsections (a) and (b); and repealed subsection (j), authorizing the Department of Transportation to award up to three contracts annually for construction of projects on a design-build basis. For present similar provisions as contained in the repealed subsection, see G.S. 136A-28.11.

§ 136-28.6. Private contract participation by the Department of Transportation.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted transportation plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the developer furnishes the right-of-way without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let by the developer for the project.

(e) Participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Municipalities may participate financially in private engineering and construction contracts for projects pertaining to streets or highways which are on a mutually adopted transportation plan for said municipality. (1987, c. 860, ss. 1, 2; 1989, c. 749, s. 1; 1991, c. 272, s. 1; 1993, c. 183, s. 1; 1995, c. 358, s. 5; c. 437, s. 3; c. 447, ss. 1, 2; 2002-170, s. 1.)

Effect of Amendments. — Session Laws 2002-170, s. 1, effective October 23, 2002, substituted "transportation plan" for "thoroughfare plan" in subdivision (b)(2) and subsection (i).

§ 136-28.7. Contract requirements relating to construction materials.

(a) The Department of Transportation shall require that every contract for construction or repair necessary to carry out the provisions of this Chapter shall contain a provision requiring that all steel and iron permanently incorporated into the construction or repair project be produced in the United States.

(b) Subsection (a) shall not apply whenever the Department of Transportation determines in writing that this provision required by subsection (a) cannot be complied with because such products are not produced in the United States in sufficient quantities to meet the requirements of such contracts or cannot be complied with because the cost of such products produced in the United States unreasonably exceeds other such products.

(c) The Department of Transportation shall apply this section consistent with the requirements in 23 C.F.R. § 635.410(b)(4).

(d) The Department of Transportation shall not authorize, provide for, or make payments to any person pursuant to any contract containing the provision required by subsection (a) unless such person has fully complied with such provision. (1989, c. 692, s. 1.18; c. 770, ss. 74.12, 74.14, 74.15; 2002-151, s. 3.)

Effect of Amendments. — Session Laws 2002-151, s. 3, effective October 9, 2002, substituted "steel and iron" for "steel and cement" in subsection (a).

§ 136-28.11. Design-build construction of transportation projects.

(a) Design-Build Contracts Authorized. — Notwithstanding any other provision of law, the Board of Transportation may award contracts for 10 projects in fiscal year 2002-2003, and 25 projects in fiscal years 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 for construction of transportation projects on a design-build basis.

(b) Design-Build Contract Amounts; Basis of Award. — The Department may award contracts for the construction of transportation projects on a design-build basis of any amount. The Department shall endeavor to ensure design-build projects are awarded on a basis to maximize participation, competition, and cost benefit. On any project for which the Department proposes to use the design-build contracting method, the Department shall attempt to structure and size the contracts for the project in order that contracting firms and engineering firms based in North Carolina have a fair and equal opportunity to compete for the contracts.

(c) Disadvantaged Business Participation Goals. — The provisions of G.S. 136-28.4 and 49 C.F.R. Part 26 shall apply to the award of contracts under this section.

(d) Findings Required. — These contracts may be awarded after a determination by the Department of Transportation that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures.

(e) Reporting Requirements. — The Department, for any proposed design-build project projected to have a construction cost in excess of one hundred million dollars ($100,000,000), shall present to the Joint Legislative Transportation Oversight Committee information on the scope and nature of the project and the reasons the development of the project on a design-build basis will best serve the public interest. Prior to the award of a design-build contract, the Secretary of Transportation shall report to the Joint Legislative Transporta-

tion Oversight Committee and to the Joint Legislative Commission on Governmental Operations on the nature and scope of the project and the reasons an award on a design-build basis will best serve the public interest. (2001-424, s. 27.2(a); 2002-151, s. 2.)

Editor's Note. —

Session Laws 2002-60, s. 1, provides: "In addition to the authority granted by G.S. 136-28.11, the Department of Transportation may award contracts by the design-build method for the multilaning of US Highway 601 from the South Carolina State line to US Highway 74 in Union County."

Effect of Amendments. — Session Laws 2002-151, s. 2, effective October 9, 2002, rewrote the section.

§ 136-29. Adjustment and resolution of highway construction contract claim.

CASE NOTES

Cited in DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

§ 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 (1 3/4¢) 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.

(d) Nature. — The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (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; 2002-120, s. 5.)

Editor's Note. — Session Laws 2002-120, s. 9, contains a severability clause.

Session Laws 2002-159, s. 65, effective October 11, 2002, provides: "It is the intent of the General Assembly that Sections 1 through 7 of S.L. 2002-120 shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of S.L. 2002-120. Nothing in Section 1 through 7 of S.L. 2002-120 shall be construed as a waiver of the sovereign immunity of the State or any other defenses as to any claim for damages, other recovery of funds, including attorneys' fees, or injunctive relief from the State by any unit of local government or political subdivision of the State."

Effect of Amendments. — Session Laws 2002-120, s. 5, effective September 24, 2002, added subsection (d). See editor's notes for applicability.

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

OPINIONS OF ATTORNEY GENERAL

The appropriation of funds in a municipality's budget is all that is necessary under the fourth requirement of this section and, therefore, a town's budgeting for solid waste services beginning January 1, 2002, was sufficient to satisfy as one of the designated services under subsection (c). See opinion of Attorney General to Michael R. Burgner, Hartsell Hartsell & White, P.A., 2001 N.C. AG LEXIS 25 (8/27/01).

§ 136-42.3. Historical marker program.

Local Modification. — Town of Lillington: 2002-47, s. 1.

Article 2A.

State Roads Generally.

§ 136-44.1. Statewide road system; policies.

Local Modification. — Village of Bald Head Island: 1997-324, s. 1.

Editor's Note. — Session Laws 2001-424, s. 27.3, as amended by 2002-126, s. 26.9(a), provides: "Of the funds appropriated in this act to the Department of Transportation:

"(1) Fourteen million dollars ($14,000,000) shall be allocated in fiscal year 2001-2002 and twenty-one million dollars ($21,000,000) shall be allocated in fiscal year 2002-2003 for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small construction projects that are located within the area covered by a two-mile radius of the municipal corporate limits.

"(2) Fifteen million dollars ($15,000,000) in fiscal year 2001-2002 and fifteen million dollars ($15,000,000) in fiscal year 2002-2003 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects as approved by the Secretary of Transportation.

"None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

"These funds are not subject to G.S. 136-44.7.

"The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 136-44.7. Secondary roads; annual work program.

(a) The Department of Transportation shall be responsible for developing criteria for improvements and maintenance of secondary roads. The criteria shall be adopted by the Board of Transportation before it shall become effective. The Department of Transportation shall be responsible for developing annual work programs for both construction and maintenance of secondary roads in each county in accordance with criteria developed. It shall reflect the long-range and immediate goals of the Department of Transportation. Projects on the annual construction program for each county shall be rated according to their priority based upon the secondary road criteria and standards which shall be uniform throughout the State. Tentative construction projects and estimated funding shall also be listed in accordance to priority. The annual construction program shall be adopted by the Board of Transportation before it shall become effective.

(b) When a secondary road in a county is listed in the first 10 secondary roads to be paved during a year on a priority list issued by the Department of Transportation under this section, the secondary road cannot be removed from the top 10 of that list or any subsequent list until it is paved. All secondary roads in a county shall be paved, insofar as possible, in the priority order of the list. When a secondary road in the top 10 of that list is removed from the list because it has been paved, the next secondary road on the priority list shall be moved up to the top 10 of that list and shall remain there until it is paved.

(c) When it is necessary for the Department of Transportation to acquire a right-of-way in accordance with (a) and (b) of this section in order to pave a secondary road or undertake a maintenance project, the Department shall negotiate the acquisition of the right-of-way for a period of up to six months. At the end of that period, if one or more property owners have not dedicated the necessary right-of-way and at least seventy-five percent (75%) of the property owners adjacent to the project and the owners of the majority of the road frontage adjacent to the project have dedicated the necessary property for the right-of-way and have provided funds required by Department rule to the Department to cover the costs of condemning the remaining property, the Department shall initiate condemnation proceedings pursuant to Article 9 of this Chapter to acquire the remaining property necessary for the project. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 8; 1989, c. 692, s. 1.9; 1991 (Reg. Sess., 1992), c. 900, s. 99; 2001-501, s. 2; 2002-86, s. 1.)

Editor's Note. —

Session Laws 2001-424, s. 27.3, as amended by 2002-126, s. 26.9(a), provides: "Of the funds appropriated in this act to the Department of Transportation:

"(1) Fourteen million dollars ($14,000,000) shall be allocated in fiscal year 2001-2002 and twenty-one million dollars ($21,000,000) shall be allocated in fiscal year 2002-2003 for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small construction projects that are located within the area covered by a two-mile radius of the municipal corporate limits.

"(2) Fifteen million dollars ($15,000,000) in fiscal year 2001-2002 and fifteen million dollars ($15,000,000) in fiscal year 2002-2003 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects as approved by the Secretary of Transportation.

"None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

"These funds are not subject to G.S. 136-44.7.

"The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-86, s. 1, effective August 22, 2002, substituted "the majority" for "seventy five percent (75%)" following "and the owners of" in subsection (c).

Article 3.

State Highway System.

Part 3. Power to Make Changes in Highway System.

§ 136-62. Right of petition.

CASE NOTES

Cited in DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

Article 6H.

Public Toll Roads and Bridges.

§ 136-89.180. Legislative findings.

The General Assembly finds 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.

Toll funding of highway and bridge construction is feasible in North Carolina and can contribute to addressing the critical transportation needs of the State. A toll program can speed the implementation of needed transportation improvements by funding some projects with tolls. (2002-133, s. 1.)

Editor's Note. — Session Laws 2002-133, s. 9, provides that the North Carolina Turnpike Authority shall evaluate the feasibility of encouraging mass transit and ridesharing in its proposed toll road facilities.

Session Laws 2002-133, s. 10, made this Article effective October 3, 2002.

§ 136-89.181. Definitions.

The following definitions apply to this Article:

(1) "Department" means the North Carolina Department of Transportation.

(2) "Turnpike Authority" means the public agency created by this Article.

(3) "Authority Board" means the governing board of the Turnpike Authority.

(4) "Turnpike Project" means a road, bridge, or tunnel project planned, or planned and constructed, in accordance with the provisions of this Article.

(5) "Turnpike System" means collectively all Turnpike Projects developed in accordance with the provisions of this Article. (2002-133, s. 1.)

§ 136-89.182. North Carolina Turnpike Authority.

(a) Creation. — There is created a body politic and corporate to be known as the "North Carolina Turnpike Authority". The Authority is constituted as a public agency, and the exercise by the Authority of the powers conferred by this Article in the construction, operation, and maintenance of toll roads and bridges shall be deemed and held to be the performance of an essential governmental function.

(b) Administrative Placement. — The Authority shall be located within the Department of Transportation for administrative purposes but shall exercise all of its powers independently of the Department of Transportation except as otherwise specified in this Article.

(c) Authority Board. — The North Carolina Turnpike Authority shall be governed by a nine-member Authority Board consisting of two 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 members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, four members appointed by the Governor, and the Secretary of Transportation. Each appointing authority shall appoint members who reside in diverse regions of the State. The Chair of the Authority shall be selected by the Authority Board.

(d) Board of Transportation Members. — No more than two members of the North Carolina Board of Transportation may serve as members of the Authority Board.

(e) Staggered Terms. — One of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and three of the initial appointments of the Governor shall be appointed to terms ending January 14, 2007. One of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of the initial appointments of the Governor shall be appointed to terms ending January 14, 2005. The Secretary of Transportation shall serve as an ex officio voting member of the Board. Thereafter, at the expiration of each stipulated term of office, all appointments shall be to a term of four years from the date of the expiration of the term.

(f) Vacancies. — All members of the Authority Board shall remain in office until their successors are appointed and qualified. The original appointing authority may appoint a member to serve out the unexpired term of any member.

(g) Removal of Board Members. — Each member of the Authority Board, notwithstanding subsection (e) of this section, shall serve at the pleasure of the appointing authority. The Chair of the Authority serves at the pleasure of the Authority Board.

(h) Conflicts of Interest, Ethics. — Members of the Authority Board shall be subject to the provisions of G.S. 136-13, 136-13.1, and 136-14.

(i) Compensation. — The appointed members of the Authority Board shall receive no salary for their services but shall be entitled to receive per diem and travel allowances in accordance with the provisions of G.S. 138-5 and G.S. 138-6 as appropriate.

(j) Bylaws. — The Authority Board shall adopt, change, or amend bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational, staffing, and administrative matters as the Authority Board may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall be submitted to the Board of Transportation and the Joint Legislative Transportation Oversight Committee for review and comment at least 45 days prior to adoption by the Authority Board.

(k) Executive Director and Administrative Employees. — The Authority Board shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director shall be the Authority's chief administrative officer and shall be responsible for the daily administration of the toll roads and bridges constructed, maintained, or operated pursuant to this Article. The Executive Director or his designee shall appoint, employ, dismiss, and, within the limits approved by the Authority Board, fix the compensation of administrative employees as the Executive Director deems necessary to carry out this Article. The Authority shall report the hiring of all administrative employees to the Joint Legislative Transportation Oversight Committee within 30 days of the date of employment.

(*l*) Office. — The offices of the Authority may be housed in one or more facilities of the Department of Transportation. (2002-133, s. 1.)

§ 136-89.183. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:

(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 study, plan, develop, design, establish, purchase, construct, operate, and maintain three Turnpike Projects, either on its own initiative or at the request of the Board of Transportation. One of the Turnpike Projects shall be located in whole or in part in a county with a population equal to or greater than 650,000 persons, according to the latest decennial census, and one Turnpike Project shall be located in a county or counties that each have a population of fewer that 650,000 persons, according to the latest decennial census. A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project.

(3) To study, plan, develop and undertake preliminary design work on three Turnpike Projects, in addition to the three turnpike projects described in subdivision (2) of this subsection, either on its own initiative or at the request of the Board of Transportation. The Authority shall take no further action on a project described by this subdivision unless authorized to do so by Statute.

(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property, including the power to acquire property by eminent domain pursuant to G.S. 136-89.184.

(5) To fix, revise, charge, and collect tolls and fees for the use of the Turnpike Projects. Prior to the effective date of any toll or fee for use

of a Turnpike Facility, the Authority shall submit a description of the proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review.

(6) To issue bonds or notes of the Authority as provided in this Article.

(7) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with the Turnpike System.

(8) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(9) To apply for, accept, and administer loans and grants of money or real or personal property from any federal agency, the State or its political subdivisions, local governments, or any other public or private sources available.

(10) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article, in accordance with the review and comment requirements of G.S. 136-89.182(j).

(11) To utilize employees of the Department; to contract for the services of consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants; to employ administrative staff as may be required in the judgment of the Authority; and to fix and pay fees or compensation to the Department, contractors, and administrative employees from funds available to the Authority.

(12) To receive and use appropriations from the State and federal government.

(13) To adopt procedures to govern its procurement of services and delivery of Turnpike Projects.

(14) To perform or procure any portion of services required by the Authority.

(15) To use officers, employees, agents, and facilities of the Department for the purposes and upon the terms as may be mutually agreeable.

(16) To contract for the construction, maintenance, and operation of a Turnpike Project.

(17) To enter into partnership agreements, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority Board present and voting, a quorum having been established. Once a policy is established, the Authority Board shall communicate it to the Executive Director or the Executive Director's designee, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority Board shall have the responsibility or authority to give operational directives to any employee of the Authority other than the Executive Director or the Director's designee. (2002-133, s. 1.)

Editor's Note. — Session Laws 2002-133, s. 9, provides that the North Carolina Turnpike Authority shall evaluate the feasibility of encouraging mass transit and ridesharing in its proposed toll road facilities.

§ 136-89.184. Acquisition of real property.

(a) General. — The Authority may acquire public or private real property by purchase, negotiation, gift, or devise, or condemnation that it determines to be necessary and convenient for the construction, expansion, enlargement, exten-

sion, improvement, or operation of a Turnpike Project. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

(b) Condemnation. — To exercise the power of eminent domain, the Authority shall commence a proceeding in its name and shall follow the procedure set forth in Article 9 of Chapter 136 of the General Statutes. (2002-133, s. 1.)

§ 136-89.185. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Section 2 of Article V of the North Carolina Constitution. (2002-133, s. 1.)

§ 136-89.186. Audit.

The operations of the Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (2002-133, s. 1.)

§ 136-89.187. Conversion of free highways prohibited.

The Authority Board is prohibited from converting any segment of the nontolled State highway system to a toll facility. (2002-133, s. 1.)

§ 136-89.188. Use of revenues.

(a) Revenues derived from Turnpike Projects authorized under this Article shall be used only for Authority administration costs; Turnpike Project development, right-of-way acquisition, construction, operation, and maintenance; and debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.

(b) The Authority may use up to one hundred percent (100%) of the revenue derived from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination of debt service and operation and maintenance expenses of the Turnpike Projects.

(c) The Authority shall use not more than five percent (5%) of total revenue derived from all Turnpike Projects for Authority administration costs. (2002-133, s. 1.)

§ 136-89.189. Turnpike Authority revenue bonds.

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond Act, and revenue bonds issued by the Authority shall be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act. (2002-133, s. 1.)

§ 136-89.190. Sale of Turnpike Authority revenue bonds.

Revenue bonds of the Authority issued pursuant to G.S. 136-89.189 and the State and Local Government Revenue Bond Act shall be sold in accordance with and pursuant to Article 7 of Chapter 159 of the General Statutes. (2002-133, s. 1.)

§ 136-89.191. Cost participation by Department of Transportation.

The Department of Transportation may participate in the cost of preconstruction activities, construction, maintenance, or operation of a Turnpike Project. (2002-133, s. 1.)

§ 136-89.192. Equity distribution formula.

Only those funds applied to a Turnpike Project from the State Highway Fund, State Highway Trust Fund, or federal-aid funds that might otherwise be used for other roadway projects within the State, and are otherwise already subject to the distribution formula under G.S. 136-17.2A, shall be included in the distribution formula.

Other revenue from the sale of the Authority's bonds or notes, project loans, or toll collections shall not be included in the distribution formula. (2002-133, s. 1.)

§ 136-89.193. Annual plan of work; annual and quarterly reports.

(a) Annual Plan of Work. — The Authority shall annually develop a plan of work for the fiscal year, describing the activities and projects to be undertaken, accompanied by a budget. This annual plan of work shall be subject to the concurrence of the Board of Transportation.

(b) Annual Reports. — The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Department of Transportation. Each report shall be accompanied by an audit of its books and accounts.

(c) Semiannual Reports. — The Authority shall submit semiannual reports to the Joint Legislative Transportation Oversight Committee, and more frequent reports if requested. The reports shall summarize the Authority's activities during the preceding six months, and shall contain any information about the Authority's activities that is requested by the Committee.

(d) Report Prior to Let of Contracts. — The Authority shall consult with and report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations prior to the letting of any contract for Turnpike Project construction authorized under G.S. 136-183(a)(2).

(e) Report Prior to Study and Design. — The Authority shall consult with and report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations prior to the study, planning, development or design of any Turnpike Project authorized under G.S. 136-89.183(a)(3). (2002-133, s. 1.)

Editor's Note. — Session Laws 2002-133, s. 9, provides that the North Carolina Turnpike Authority shall evaluate the feasibility of encouraging mass transit and ridesharing in its proposed toll road facilities.

§ 136-89.194. Laws applicable to the Authority; exceptions.

(a) Motor Vehicle Laws. — The Turnpike System 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 the Turnpike System as on any other highway or public vehicular area.

(b) Contracting. — For the purposes of implementing this Article, the Authority shall solicit competitive proposals for the construction of Turnpike Projects in accordance with the provisions of Article 2 of this Chapter. Contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with construction of Turnpike Projects shall be solicited in accordance with procedures utilized by the Department of Transportation.

(c) Alternative Contracting Methods. — Notwithstanding the provisions of subsection (b) of this section, the Authority may authorize the use of alternative contracting methods if:

(1) The authorization applies to an individual project;

(2) The Authority has concluded, and documented in writing, that the alternative contracting method is necessary because the project cannot be completed utilizing the procedures of Article 2 of this Chapter within the necessary time frame or available funding or for other reasons the Authority deems in the public interest;

(3) The Authority has provided, to the extent possible, for the solicitation of competitive proposals prior to awarding a contract; and

(4) The approved alternative contracting method provides for reasonable compliance with the disadvantaged business participation goals of G.S. 136-28.4. (2002-133, s. 1.)

§ 136-89.195. Internet report of funds expended.

The Department shall publish and update annually on its Internet web site a record of all expenditures of the Authority for highway construction, maintenance, and administration. The record shall include a total expenditure amount by county. For each Turnpike Project, the record shall include a readily identifiable project name or location, the nature of the project, the amount of the project, the contractor for the project, the date of project letting, and the actual or expected project completion date. (2002-133, s. 1.)

§ 136-89.196. Removal of tolls.

The Authority shall, upon fulfillment of and subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds, remove tolls from a Turnpike Project. (2002-133, s. 1.)

§ 136-89.197. Maintenance of nontoll routes.

The Department shall maintain an existing, alternate, comparable nontoll route corresponding to each Turnpike Project constructed pursuant to this Article. (2002-133, s. 1.)

Article 7.

Miscellaneous Provisions.

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

CASE NOTES

Section Not Applicable Where Road Is Way of Necessity. —

When it is established that a lot in a subdivision abuts the street sought to be withdrawn, it will be conclusively presumed that the street is necessary to afford convenient ingress or egress to or from the lot, and, in the absence of consent by the lot owner to the withdrawal, G.S. 136-96 has no application and the dedication may not be withdrawn irrespective of lapse of time or whether or not the street has been opened and used. Stephens v. Dortch, 147 N.C. App. 429, 556 S.E.2d 14, 2001 N.C. App. LEXIS 1186 (2001).

Effect of Withdrawal. —

Where an easement was granted both to the public and to the owners of specified property, extinguishing the public easement due to the failure to open the easement for public use, did not extinguish the easement granted to the specified property owners. Stephens v. Dortch, 148 N.C. App. 509, 558 S.E.2d 889, 2002 N.C. App. LEXIS 29 (2002), cert. denied, 355 N.C. 353, 562 S.E.2d 430 (2002).

Cited in DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

Article 9.

Condemnation.

§ 136-107. Time for filing answer.

CASE NOTES

Court did not abuse its discretion in permitting corporate landowner to file an answer in a condemnation proceeding more than one year after the city served the summons and complaint on the Secretary of State, because the corporate landowner did not maintain a registered agent or office, where the city had constructive notice of the corporate landowner's stockholder and president as well as one other corporate fiduciary and after one year served the default motion on the corporate landowner's president, the fiduciary, and the incorporator. City of Charlotte v. Whippoorwill Lake, Inc., — N.C. App. —, 563 S.E.2d 297, 2002 N.C. App. LEXIS 575 (2002).

Article 11.

Outdoor Advertising Control Act.

§ 136-131.1. (See editor's note for expiration of section) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. — Session Laws 1981, c. 1147, s. 2, as amended by Session Laws 1983, c. 318, s. 1, Session Laws 1987 (Reg. Sess., 1988), c. 1024, s. 1, Session Laws 1989, c. 166, s. 1,

Session Laws 1993, c. 725, s. 1, Session Laws 1998-23, s. 7, Session Laws, 1998-212, s. 27.5(a), and Session Laws 2002-11, s. 1, will expire upon amendment to or repeal of 23 U.S.C § 131(g).

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) Repealed by Session Laws 2001-424, s. 27.1, effective July 1, 2001.

(5) Interest and income earned by the Fund.

(a1) The Department shall use two hundred twenty million dollars ($220,000,000) in fiscal year 2001-2002, two hundred twelve million dollars ($212,000,000) in fiscal year 2002-2003, and two hundred fifty-five million dollars ($255,000,000) in fiscal year 2003-2004 of the cash balance of the Highway Trust Fund for the following purposes:

(1) For primary route pavement preservation. — One hundred seventy million dollars ($170,000,000) in fiscal year 2001-2002, and one hundred fifty million dollars ($150,000,000) in each of the fiscal years 2002-2003 and 2003-2004. Up to ten percent (10%) of the amount for each of the fiscal years 2001-2002, 2002-2003, and 2003-2004 is available in that fiscal year, at the discretion of the Secretary of Transportation, for:

a. Highway improvement projects that further economic growth and development in small urban and rural areas, that are in the Transportation Improvement Program, and that are individually approved by the Board of Transportation; or

b. Highway improvements that further economic development in the State and that are individually approved by the Board of Transportation.

(2) For preliminary engineering costs not included in the current year Transportation Improvement Program. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(3) For computerized traffic signal systems and signal optimization projects. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(4) For public transportation twenty million dollars ($20,000,000) in fiscal year 2001-2002, twenty-five million dollars ($25,000,000) in fiscal year 2002-2003, and seventy-five million dollars ($75,000,000) in fiscal year 2003-2004.

(5) For small urban construction projects. — Seven million dollars ($7,000,000) in fiscal year 2002-2003.

(a2) Repealed by Session Laws 2002-126, s. 26.4(b), effective July 1, 2002.

(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. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer's average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. 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.

(b1) The Secretary may authorize the transfer of funds allocated under subdivisions (1) through (4) of subsection (b) of this section to other projects that are ready to be let and were to be funded from allocations to those subdivisions. The Secretary shall ensure that any funds transferred pursuant to this subsection are repaid promptly and in any event in no more than four years. The Secretary shall certify, prior to making any transfer pursuant to this subsection, that the transfer will not affect the delivery schedule of Highway Trust Fund projects in the current Transportation Improvement Program. No transfers shall be allowed that do not conform to the applicable provisions of the equity formula for distribution of funds, G.S. 136-17.2A. If the Secretary authorizes a transfer pursuant to this subsection, the Secretary shall report that decision to the next regularly scheduled meetings of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, and to the Fiscal Research Division.

(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; 2001-424, ss. 27.1, 27.23(d), 27.23(e), 27.23(f); 2002-126, ss. 26.4(a), 26.4(b), 26.9(b); 2002-133, s. 3; 2002-159, s. 41.5.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 26.4(c), provides: "The Department of Transportation is encouraged to use all existing resources including bonded indebtedness to mitigate any delays in the construction of Transportation Improvement Program projects."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, ss. 26.4(a), 26.4(b), and 26.9(b), effective July 1, 2002, in subsection (a1), substituted "shall" for "may," and "two hundred twelve million dollars ($212,000,000)" for "two hundred five million dollars ($205,000,000)"; added subdivision (a1)(5); and repealed former subsection (a2), which read: "The Department shall certify to the Joint Legislative Transportation Oversight Committee each year, on or before November 1, that use of the Highway Trust Fund cash balances for these purposes will not adversely affect the delivery schedule of Highway Trust Fund projects in the 2002-2008 Transportation Improvement Program."

Session Laws 2002-133, s. 3, effective October 3, 2002, added the third through sixth sentences in subsection (b).

Session Laws 2002-159, s. 41.5, effective July 1, 2002, added sub-subdivision (a1)(1)b., and made related changes.

§ 136-180. (For contingent repeal see editor's note) Urban loops.

(a) Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
Asheville Western Loop	Multilane facility on new location from I-26 west of Asheville to US-19/23 north of Asheville for the purpose of connecting these roads. The funds may be used to improve existing corridors.	Buncombe

Loop	Description	Affected Counties
Charlotte Outer Loop	Multilane facility on new location encircling City of Charlotte	Mecklenburg
Durham Northern Loop	The corridor shall be identified as a part of the local long-range transportation plan as mutually adopted in 2003 by the Durham-Chapel Hill-Carrboro metropolitan planning organization and the North Carolina Board of Transportation	Durham, Orange
Greensboro Loop	Multilane facility on new location encircling City of Greensboro	Guilford
Raleigh Outer Loop	Multilane facility on new location from US-1 southwest of Cary northerly to US-64 in eastern Wake County	Wake
Wilmington Bypass	Multilane facility on new location from US-17 northeast of Wilmington to US-17 southwest of Wilmington, including the Blue Clay Road interchange	New Hanover
Winston-Salem Northbelt	Multilane facility on new location from I-40 west of Winston-Salem northerly to I-40 in eastern Forsyth County	Forsyth

(b) The Board of Transportation may, by official resolution, accept a new interstate or freeway as the revised termini of an urban loop described in subsection (a) of this section, and the revised project shall be eligible for funding with funds described in G.S. 136-176(b)(2) if the following conditions are met:

(1) The Department of Transportation has constructed a new interstate or freeway facility since 1989 and has changed the official route designation from the termini described in subsection (a) of this section to the new facility.

(2) The Board of Transportation finds that the purposes of the urban loop facility, specifically including reduced congestion and high-speed, safe, regional through-travel service, would be enhanced by the action.

(1989, c. 692, s. 1.1; 2002-126, s. 26.10(a).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 26.10(a), effective July 1, 2002, rewrote the section.

§ 136-180.1: Repealed by Session Laws 2002-126, s. 26.10(b), effective July 1, 2002.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 16.

Planning.

§ 136-203: Repealed by Session Laws 2002-148, s. 1, effective October 9, 2002.

Article 17.

Rural Transportation Planning Organizations.

§ 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. Noncontiguous counties adjacent to the same Metropolitan Planning Organization may form a Rural Transportation Planning Organization. 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; 2002-170, s. 2.)

Effect of Amendments. — Session Laws 2002-170, s. 2, effective October 23, 2002, inserted the second sentence in subsection (b).

§ 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 to carry out the duties listed in G.S. 136-212. 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 to carry out the duties listed in G.S. 136-212. The Department may make additional planning grants to economically distressed counties, as designated by the North Carolina Department of Commerce. (2000-123, s. 2; 2002-170, s. 3.)

Effect of Amendments. — Session Laws 2002-170, s. 3, effective October 23, 2002, in subsection (c), substituted "to carry out the duties listed in G.S. 136-212" for "for professional planning staff" at the end of the first sentence, and added "to carry out the duties listed in G.S. 136-212" to the end of the second sentence.

Chapter 138.

Salaries, Fees and Allowances.

§ 138-5. Per diem and allowances of State boards, etc.

OPINIONS OF ATTORNEY GENERAL

This Section Does Not Require Payments to Members of Board of Nursing. — The payment of members of state boards and commissions as mandated by subsection (a) does not apply to the members of the Board of Nursing. See opinion of Attorney General to Howard A. Kramer, Attorney at Law and General Counsel, North Carolina Board of Nursing, 2001 N.C. AG LEXIS 32 (7/27/01).

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

§ 139-6. District board of supervisors — elective members; certain duties.

After the issuance of the certificate of organization of the soil and water conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil and water conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no earlier than noon on the second Monday in June and no later than noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time of filing the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S. 139-7.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil and water conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of

supervisors to perform those powers, duties, and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4; 1979, c. 519, s. 1; 1981, c. 560, s. 3; 2002-159, s. 55(h).)

Effect of Amendments. — Session Laws 2002-159, s. 55(h), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, in the fourth paragraph, inserted "no earlier than noon on the second Monday in June and" and deleted "12:00" preceding "noon" in the second sentence, and substituted "time of filing" for "time he files" in the third sentence.

Article 4.

Grants for Small Watershed Projects.

§ 139-54. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of small watershed projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

(1) Land rights acquisition for impounding or retarding water — fifty percent (50%).

(2) Engineering fees — fifty percent (50%).

(3) Anticipated future and present water supply needs in conjunction with watershed improvement works or projects as described in G.S. 139-37.1 — fifty percent (50%).

(4) Installation of recreational facilities and services (to include land acquisition) as described in G.S. 139-46 — fifty percent (50%).

(5) Construction costs for water management (drainage or irrigation) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66 ⅔%).

(6) Conservation and replacement of fish and wildlife habitat as described in G.S. 139-46 — seventy-five percent (75%).

(7) Rehabilitation or improvement of water resources structural measures in accordance with criteria established by the Natural Resources Conservation Service of the United States Department of Agriculture pursuant to the Watershed Protection and Flood Prevention Act of 1954, as amended by the Small Watershed Rehabilitation Amendments of 2000 (Pub. L. No. 106-472, 114 Stat. 2007), codified at 16 U.S.C. § 1001, et. seq.; the Dam Safety Law of 1967, G.S. 143-215.23, et. seq.; and rules adopted pursuant thereto — fifty percent (50%). (1977, 2nd Sess., c. 1206; 1979, c. 1046, s. 2; 2002-176, s. 3.)

Effect of Amendments. — Session Laws 2002-176, s. 3, effective October 31, 2002, added subdivision (7); and made minor stylistic changes throughout the section.

§ 139-55. Review of applications.

(a) The State Soil and Water Conservation Commission shall receive and review applications for grants for small watershed projects authorized under

Public Law 566 (83rd Congress, as amended) and approve, approve in part, or disapprove all such applications.

(b) In reviewing each application, the State Soil and Water Conservation Commission shall consider:

(1) The financial resources of the local sponsoring organization;

(2) Nonstructural measures such as sedimentation control ordinances and flood plain zoning ordinances enacted and enforced by local governments to alleviate flooding;

(3) Regional benefits of projects to an area greater than the area under jurisdiction of the local sponsoring organization;

(4) Any direct benefit to State-owned lands and properties. (1977, 2nd Sess., c. 1206; 2002-165, s. 2.17.)

Effect of Amendments. — Session Laws 2002-165, s. 2.17, effective October 23, 2002, substituted "sedimentation control" for "sediment control" in subdivision (b)(2).

Chapter 142.

State Debt.

Article 8.

State Energy Conservation Finance Act.

Article 8.

State Energy Conservation Finance Act.

§ 142-60. Short title.

This Article is the State Energy Conservation Finance Act. (2002-161, s. 9.)

Editor's Note. — Session Laws 2002-161, s. 13, made this Article effective January 1, 2003, and applicable to contracts entered into on or after that date.

Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

§ 142-61. Definitions.

The following definitions apply in this Article:

(1) Certificates of participation. — Certificates or other instruments delivered by a special corporation as provided in this Article evidencing the assignment of proportionate and undivided interests in the rights to receive payments to be made by the State pursuant to one or more financing contracts.

(2) Cost. — The term includes:

a. The cost of construction, modification, rehabilitation, renovation, improvement, acquisition, or installation in connection with an energy conservation measure.

b. The cost of engineering, architectural, and other consulting services as may be required, including the cost of performing the technical analysis in accordance with G.S. 143-64.17A and inspection and certification in accordance with G.S. 143-64.17K.

c. Finance charges, reserves for debt service and other types of reserves required pursuant to a financing contract or any other related documentation, and interest prior to and during construction, and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.

d. Administrative expenses and charges.

e. The cost of bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of the financing contract to the extent and as determined by the State Treasurer.

f. The cost of reimbursing the State for payments made for any costs described in this subdivision.
g. Any other costs and expenses necessary or incidental to implementing the purposes of this Article.

(3) Credit facility. — An agreement that:
a. Is entered into by 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 of America; and
b. Provides 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 with respect to any financing contract payable on demand or tender by the owner in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

(4) Energy conservation measure. — Defined in G.S. 143-64.17.
(5) Energy conservation property. — Buildings, equipment, or other property with respect to which an energy conservation measure is undertaken.
(6) Financing contract. — An installment financing contract entered into pursuant to the provisions of this Article to finance the cost of an energy conservation measure.
(7) Person. — An individual, a firm, a partnership, an association, a corporation, a limited liability company, or any other organization or group acting as a unit.
(8) Special corporation. — A nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of facilitating the incurrence of certificates of participation indebtedness by the State under this Article.
(9) State governmental unit. — Defined in G.S. 143-64.17.
(10) State Treasurer. — The incumbent Treasurer, from time to time, of the State. (2002-161, s. 9.)

§ 142-62: Reserved for future codification purposes.

§ 142-63. Authorization of financing contract.

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed fifty million dollars ($50,000,000) at any one time. (2002-161, s. 9.)

§ 142-64. Procedure for incurrence or issuance of financing contract.

(a) When a State governmental unit has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the

State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures.

(b) A financing contract may be entered into pursuant to this Article only after all of the following conditions are met:

(1) The Office of State Budget and Management has certified that resources are expected to be available to the State to pay the payments to fall due under the financing contract as they become due and payable.

(2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:

a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than 12 years from the date the financing contract is entered.

b. The not-to-exceed interest rate or rates (or the equivalent thereof), which may be fixed or vary over a period of time, with respect to the financing contract.

c. The appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it.

(3) The State Treasurer has approved the financing contract and all other documentation related to it, including any deed of trust, security agreement, trust agreement or any credit facility.

The resolution of the Council of State shall include any other matters the Council of State considers appropriate.

(c) In determining whether to approve a financing contract under subdivision (b)(3) of this section, the State Treasurer may consider the factors the State Treasurer considers relevant in order to find and determine all of the following:

(1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the energy conservation measure.

(2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract are not excessive.

(3) The financing contract can be entered into on terms desirable to the State.

(4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon any scheduled or proposed sale of obligations of the State or any State agency.

(d) The Office of State Budget and Management is authorized to certify that funds are expected to be available to the State to make the payments due under a financing contract entered into under the provisions of this section as the payments become due and payable. In so certifying, the Office of State Budget and Management may take into account expected decreases in appropriations to the State governmental unit that will offset payments expected to be made under the financing contract. (2002-161, s. 9.)

§ 142-65. Security; other requirements.

(a) In order to secure the performance by the State of its obligations under a financing contract or any other related documentation, the State may grant a lien on, or security interest in, all or any part of the energy conservation property or the land upon which the energy conservation property is or will be located.

(b) No deficiency judgment may be rendered against the State or any State governmental unit in any action for breach of any obligation contained in a financing contract or any other related documentation, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under a financing contract or any other related documentation. In the event that the General Assembly does not appropriate funds sufficient to make payments required under a financing contract or any other related documentation, the net proceeds received from the sale, lease, or other disposition of the property subject to the lien or security interest created pursuant to subsection (a) of this section shall be applied to satisfy these payment obligations in accordance with the deed of trust, security agreement, or other documentation creating the lien or security interest. These net proceeds are hereby appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under the financing contract or any other related documentation shall be paid to the State Treasurer for deposit to the General Fund of the State.

(c) Neither a financing contract nor any other related documentation shall contain a nonsubstitution clause that restricts the right of the State to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any State property that is the subject of an energy conservation measure.

(d) A financing contract may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to it, appropriations necessary to make the payments required under the financing contract.

(e) A financing contract may contain any provisions for protecting and enforcing the rights and remedies of the person advancing moneys or providing funds under the financing contract that are reasonable and not in violation of law, including covenants setting forth the duties of the State in respect of the purposes to which the funds advanced under a financing contract may be applied, and the duties of the State with respect to the property subject to the lien or security interest created pursuant to subsection (a) of this section, including, without limitation, provisions relating to insuring and maintaining any property and the custody, safeguarding, investment, and application of moneys.

(f) The interest component of the installment payments to be made under a financing contract may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

(g) If the State Treasurer determines that it is in the best interest of the State, the State may enter into, or arrange for the delivery of, a credit facility to secure payment of the payments due under a financing contract or to secure payment of the purchase price of any certificates of participation delivered as provided in this Article. (2002-161, s. 9.)

§ 142-66. Payment provisions.

The payment of amounts payable by the State under a financing contract and any other related documentation during any fiscal biennium or fiscal year

shall be limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this Article and no financing contract or any other related documentation shall be construed or interpreted as creating a pledge of the faith and credit of the State or any agency, department, or commission of the State within the meaning of any constitutional debt limitation. (2002-161, s. 9.)

§ 142-67. Certificates of participation.

(a) If the State Treasurer determines that the State would realize debt service savings under one or more financing contracts if certificates of participation are issued with respect to the rights to receive payments under the financing contract, then the State Treasurer is authorized to take actions, with the consent of the Council of State, that will effectuate the delivery of certificates of participation for that purpose.

(b) Terms; Interest. — Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this Article, except that the terms of the sale must also be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

(c) Trust Agreement. — Certificates of participation may be delivered pursuant to a trust agreement or similar instrument with a corporate trustee approved by the State Treasurer. (2002-161, s. 9.)

§ 142-68. Tax exemption.

Any financing contract entered pursuant to this Article, and any certificates of participation relating to it, shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, and gift taxes; income taxes on the gain from the transfer of the financing contract or certificates of participation; and franchise taxes. The interest component of the installment payments made by the State under the financing contract, including the interest component of any certificates of participation, is not subject to taxation as income. (2002-161, s. 9.)

§ 142-69. Other agreements.

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, credit enhancement 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 entering into financing contracts and issuing certificates of participation pursuant to this Article. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, fiduciaries, and bond attorneys to be associated with any financing contracts or certificates of participation under this Article as the State Treasurer considers appropriate. (2002-161, s. 9.)

§ 142-70. Investment eligibility.

Financing contracts entered into pursuant to this Article, and any certificates of participation relating to them, are securities or obligations 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, and other financial institutions engaged in business in the State; and executors, administrators, trustees, and other fiduciaries. Financing contracts entered pursuant to this Article, and any certificates of participation relating to them, are securities or obligations that may properly and legally be deposited with and received by any officer or agency of the State or any political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may later be authorized by law. (2002-161, s. 9.)

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

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; Session Laws 2000-67, s. 28; Session Laws 2001-424, s. 36.1; and Session Laws 2002-126, s. 31.1, 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 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Funds Collected by Board of Nursing Do Not Constitute "State Funds." See opinion of Attorney General to Howard A. Kramer, Attorney at Law and General Counsel, North Carolina Board of Nursing, 2001 N.C. AG LEXIS 32 (7/27/01).

§ 143-2. Purposes.

OPINIONS OF ATTORNEY GENERAL

The Governor has authority to transfer money from the Wireless 911 Fund to avoid a budget deficit, although it is within his discretion as to whether to do so. See opinion of Attorney General to Mr. Charles B. Archer, Vice Chair, North Carolina Wireless 911 Board, 2001 N.C. AG LEXIS 39 (6/29/01).

§ 143-3.3. Assignments of claims against State.

(a) Definitions. — The following definitions apply in this section:

(1) Assignment. An assignment or transfer of a claim, or a power of attorney, an order, or another authority for receiving payment of a claim.

(2) Claim. A claim, a part or a share of a claim, or an interest in a claim, whether absolute or conditional.

(3) Qualified charitable organization. A charitable organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

(4) State employee credit union. A credit union organized under Chapter 54 of the General Statutes whose membership is at least one-half employees of the State.

(5) The State. The State of North Carolina and any department, bureau, or institution of the State of North Carolina.

(b) Assignments Prohibited. — Except as otherwise provided in this section, any assignment of a claim against the State is void, regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for payment of the claim. Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State.

(c) Assignments in Favor of Certain Entities Allowed. — This section does not apply to an assignment in favor of:

(1) A hospital.

(2) A building and loan association.

(3) A uniform rental firm in order to allow an employee of the Department of Transportation to rent uniforms that include day-glo orange shirts or vests as required by federal and State law.

(4) An insurance company for medical, hospital, disability, or life insurance.

(d) Assignments to Meet Child Support Obligations Allowed. — This section does not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1.

(e) Assignments for Prepaid Legal Services Allowed. — This section does not apply to an assignment for payment for prepaid legal services.

(f) Payroll Deduction for State Employee Credit Union Accounts Allowed. — An employee of the State who is a member of a State employee credit union may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit to any credit union accounts, purchase of any credit union shares, or payment of any credit union obligations agreed to by the employee and the State employee credit union.

(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. — An employee of the State or any of its institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, the majority of whom are employees of the State or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education.

(h) Payroll Deduction for State Employees Combined Campaign Allowed. — Subject to rules adopted by the State Controller, an employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum to be paid to satisfy the employee's pledge to the State Employees Combined Campaign.

(i) Payroll Deduction for Public School and Community College Employees' Contributions to Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, an employee of a local board of education or community college may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the board of education or community college of a designated lump sum to be contributed to a qualified charitable organization that has first been approved by the employee's board of education or community college board.

(j) Payroll Deduction for University of North Carolina System Employees' Contributions to Certain Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution of a designated lump sum to be contributed to a qualified charitable organization that exists to support athletic or charitable programs of the constituent institution and that has first been approved by the President of The University of North Carolina as existing to support athletic or

charitable programs. If a payroll deduction plan under this subsection results in additional costs to a constituent institution, these costs shall be paid by the qualified charitable organizations receiving contributions under the plan.

(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities.

(*l*) Assignment of Payments From the Underground Storage Tank Cleanup Funds. — This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625; 1977, c. 88; 1981, c. 869; 1981 (Reg. Sess., 1982), c. 1282, ss. 14, 15; 1983, c. 680; c. 913, s. 49; 1983 (Reg. Sess., 1984), c. 1034, s. 147; c. 1036, s. 1; 1985 (Reg. Sess., 1986), c. 1024, s. 5; 1987, c. 738, s. 223; 1989, c. 215; 1989 (Reg. Sess., 1990), c. 1066, s. 82; 1991, c. 688, s. 1; 1993, c. 561, s. 63(a); 1997-412, s. 9; 1998-161, s. 7; 2002-126, s. 6.4(a).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 6.4(a), effective July 1, 2002, in subsection (g), added the second paragraph, and in the first sentence of the third paragraph, substituted "An" for "The", and added "under this subsection."

OPINIONS OF ATTORNEY GENERAL

Qualification for Payroll Deductions by Employee Association. — In order to qualify for the privilege of payroll deductions, an employee association must meet the following criteria: (1) the association must be domiciled in North Carolina, i.e., it must have a registered agent for service of process in the state and maintain an office in the state with a resident officer, director, managing agent or member of the governing body authorized to accept payment of the payroll deductions; (2) the association must have at least 2000 members; (3) the majority of the association's members must be employees of the state or public schools; and (4) an employee must authorize the deduction in writing. See opinion of Attorney General to Susan H. Ehringhaus, Vice Chancellor and General Counsel, University of North Carolina, 1999 N.C. AG LEXIS 34 (10/19/99).

§ 143-10. Preparation of budget and public hearing.

Editor's Note. — Session Laws 2002-144, s. 4, effective July 1, 2002 and expiring on June 30, 2003, amended G.S. 143-10 by rewriting the last paragraph in subsection (a). The apparent intent was to amend the last paragraph of G.S. 143-143.10(a). At the direction of the Revisor of Statutes, the amendment has not been implemented in the section above. See editor's note under G.S. 143-143.10.

§ 143-15.2. Use of General Fund credit balance; priority uses.

Editor's Note. —

Session Laws 2002-126, s. 2.2(m), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2002-2003 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2002."

Session Laws 2002-126, s. 2.2(n), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2002-2003 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2002."

Both subsections 2.2(m) and (n) became effective June 30, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-15.3. Use of General Fund credit balance; priority uses.

Editor's Note. —

Session Laws 2002-12, s. 2, as amended by Session Laws 2002-54, s. 1, Session Laws 2002-101, s. 1, and by Session Laws 2002-126, s. 31.4(c), effective July 1, 2002 and expiring September 30, 2002, provides: "G.S. 143-15.3(b) prohibits the Director of the Budget from using funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly. The General Assembly hereby authorizes the Director of the Budget to use funds that were credited to the Savings Reserve Account on or before June 30, 2002, to the extent necessary to balance the State budget for the 2001-2002 fiscal year, and funds are hereby appropriated from the Savings Reserve Account for this purpose."

Session Laws 2002-126, s. 2.2(m), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2002-2003 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2002."

Session Laws 2002-126, s. 2.2(n), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2002-2003 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2002."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-15.3B. The Clean Water Management Trust Fund.

Editor's Note. —

Session Laws 2001-424, s. 2.2(h), as amended by Session Laws 2002-126, s. 12.9, provides: "Notwithstanding G.S. 143-15.3B(a) for the 2001-2003 fiscal biennium only, the appropriation to the Clean Water Management Trust Fund for the 2001-2002 fiscal year is only forty million dollars ($40,000,000) as provided by this act and is only sixty-six million five hundred thousand dollars ($66,500,000) for the 2002-2003 fiscal year as provided by this act. The funds appropriated by this act to the Clean

Water Management Trust Fund shall be used as provided by G.S. 143-15.3B(b)."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-16.4. Settlement Reserve Fund.

Editor's Note. —

Session Laws 2002-126, s. 2.2(h), as amended by Session Laws 2002-159, s. 69, provides: "The General Assembly finds that over the last two fiscal years, the cost of the Medicaid program has increased over one billion dollars ($1,000,000,000). The downturn in the economy has caused an unforeseeable increase in the number of persons eligible for the program. Even with the significant expansion funds appropriated for the increased costs, transfers of funds to meet obligations for the 2001-2002 fiscal year, and significant cost-savings measures imposed by the General Assembly and the Department of Health and Human Services, Medicaid will still need additional State funds next year to cover increased costs.

"The General Assembly further finds that due to the downturn in the economy and the loss of jobs in various sectors of the economy, the State must undertake various economic initiatives.

"Funds transferred pursuant to this section shall be used only for Medicaid and for economic initiatives.

"Notwithstanding G.S. 143-16.4(a2), of the funds added to the Tobacco Trust Account from the Master Settlement Agreement settlement payments pursuant to Section 6(2) of S.L. 1999-2 during the 2002-2003 fiscal year, the sum of thirty-eight million dollars ($38,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2002-2003 fiscal year.

"Notwithstanding G.S. 143-16.4(a1), of the funds added to the Health Trust Account from the Master Settlement Agreement settlement payments pursuant to Section 6(2) of S.L. 1999-2 during the 2002-2003 fiscal year, the sum of forty million dollars ($40,000,000) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2002-2003 fiscal year.

"Notwithstanding G.S. 147-86.30(c), the Health and Wellness Trust Fund Commission may transfer up to eighteen million dollars ($18,000,000) from the Fund Reserve created in G.S. 147-86.30 to the Health and Wellness Trust Fund nonreserved funds to be expended in accordance with G.S. 147-86.30(d) during the 2002-2003 fiscal year."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-173, s. 4, provides: "At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding, the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations."

§ 143-23. All maintenance funds for itemized purposes; transfers between objects or line items.

Editor's Note. —

Session Laws 2001-424, s. 25.6(b), as amended by Session Laws 2002-126, s. 17.9, provides: "Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2001-2003 biennium for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

"The Department of Administration, Purchase and Contract Division, and the Department of Correction shall review the current statewide contract for purchase of prescription drugs as it applies to the Department of Correction's purchases for inmates to determine if the Department is receiving the lowest rate available and to determine whether the Department should be authorized to issue a request for proposals for a separate vendor or purchasing consortium for the provision of prescription drugs for inmates. The Departments shall report on their findings to the Joint Legislative Commission on Governmental Operations by February 1, 2002."

Session Laws 2002-126, s. 7.13(c), provides: "Notwithstanding G.S. 143-23, the State Board of Education may reorganize the Department of Public Instruction, create a new associate superintendent position in the Department, and transfer funds within the budget of the Department to the extent necessary to implement the reorganization."

Session Laws 2002-126, s. 8.8(a), effective September 30, 2002, and expiring June 30, 2003, provides: "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 base budget reductions and to reorganize the System Office to maintain management efficiencies. The State Board shall report to the Chairs of the Senate Appropriations Committee on Education/Higher Education and the House Appropriations Subcommittee on Education prior to transferring the funds."

Session Laws 2002-126, s. 11.2(b), provides: "Notwithstanding G.S. 143-23, the Division of Research Stations of the Department of Agriculture and Consumer Services shall not spend more during the 2002-2003 fiscal year than is appropriated under this act for the Division of Research Stations of the Department of Agriculture and Consumer Services for the 2002-2003 fiscal year."

Session Laws 2002-126, s. 29.2(e), provides: "Notwithstanding G.S. 143-23, if additional federal funds that require a State match are received for water resources projects or for beach nourishment projects for the 2002-2003 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 the federal funds."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-23.2. Transfers to Department of Health and Human Services.

Editor's Note. —

Session Laws 2002-126, s. 10.19D, provides: "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 forty-three million seven hundred forty-seven thousand five hundred thirty-eight dollars ($43,747,538) for the 2002-2003 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 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the

textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. Except as provided in subsection (b) of this section, the Director of the Budget is given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has

exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue. (1929, c. 100, s. 26; 1955, c. 578, s. 7; 1973, c. 476, s. 193; 1981, c. 859, s. 47.1; 1983, c. 717, s. 58; 1985, c. 290, s. 5; 1985 (Reg. Sess., 1986), c. 955, ss. 73, 74; 1996, 2nd Ex. Sess., c. 18, s. 7.4(g); 2002-120, s. 7.)

Editor's Note. —

Session Laws 2002-120, s. 9, contains a severability clause.

Session Laws 2002-126, s. 11.2(a), provides: "The Office of State Budget and Management shall, in accordance with G.S. 143-25, adjust its current method of budgeting receipt revenues within the Department of Agriculture and Consumer Services to more accurately reflect actual revenues."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-159, s. 65, effective October 11, 2002, provides: "It is the intent of the General Assembly that Sections 1 through 7 of S.L. 2002-120 shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of S.L. 2002-120. Nothing in Section 1 through 7 of S.L. 2002-120 shall be construed as a waiver of the sovereign immunity of the State or any other defenses as to any claim for damages, other recovery of funds, including attorneys' fees, or injunctive relief from the State by any unit of local government or political subdivision of the State."

Effect of Amendments. — Session Laws 2002-120, s. 7, effective September 24, 2002, rewrote the section.

§ 143-27.2. Discontinued service retirement allowance and severance wages for certain State employees.

OPINIONS OF ATTORNEY GENERAL

State Budget Officer Cannot Select Discontinued Service Retirement Allowance Unless Employing Agency Head Has Approved Payment. — The State Budget Officer cannot approve discontinued service retirement allowance when the agency head of the employing agency does not recommend (and approve) such an allowance, even if state funds are available and a state employee meets the age and length of service requirements set forth in this section. See opinion of Attorney General to Mr. David T. McCoy, State Budget Officer, 2001 N.C. AG LEXIS 30 (11/7/01).

§ 143-28. All State agencies under provisions of this Article.

Editor's Note. — Session Laws 2002-123, s. 5, effective September 26, 2002, provides: "The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without begin subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes."

OPINIONS OF ATTORNEY GENERAL

The Governor has authority to transfer money from the Wireless 911 Fund to avoid a budget deficit, although it is within his discretion as to whether to do so. See opinion of Attorney General to Mr. Charles B. Archer, Vice Chair, North Carolina Wireless 911 Board, 2001 N.C. AG LEXIS 39 (6/29/01).

§ 143-34.1. Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.

OPINIONS OF ATTORNEY GENERAL

Voluntary Indemnity Plan. — The statutes that govern the Teachers' and State Employees' Comprehensive Major Medical Plan and the Statewide Flexible Benefits Program permit the Statewide Flexible Benefits Program to offer a voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits. See opinion of Attorney General to Mr. Carl Goodwin, Director, Risk Control Services, Office of State Personnel, 2001 N.C. AG LEXIS 40 (10/3/01).

Cafeteria Plan. — The University of North Carolina, or some of its campuses, may not offer a cafeteria plan which allows pre-tax premiums for dependent health coverage as such competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits. See opinion of Attorney General to Leslie Winner, Vice President and General Counsel, University of North Carolina, 2002 N.C. AG LEXIS 15 (3/26/02).

ARTICLE 3.

Purchases and Contracts.

§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

Local Modification. — (As to Chapter 143, Article 3) Piedmont Triangle International Authority: 1998-55, s. 11; 2002-146, 2.8 (expires January 1, 2010).

Editor's Note. —

Session Laws 2002-126, s. 8.10, provides: "Notwithstanding any other provision of law, all fees collected by the Hosiery Technology Center of Catawba Valley Community College for the testing of hosiery products shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Contracts with Experts, Consultants, or Other Professional Advisors to Review Conversion Plans Are Exempt from Articles 3 and 3C of Chapter 143. — The Commissioner of Insurance has statutory authority to contract with experts, consultants, or other professional advisors to review conversion plans without adhering to the requirements set forth in Articles 3 and 3C of Chapter 143, G.S. 143-48 et seq. and G.S. 143-64.20 et seq.; the only statutory requirement that must be met by the Commissioner is that the costs for the personal professional service contracts must not exceed an amount that is reasonable and appropriate for the review of the plan. See opinion of Attorney General to Peter A. Kolbe, General Counsel, North Carolina Department of Insurance, 2001 N.C. AG LEXIS 28 (8/24/01).

§ 143-48.3. Electronic procurement.

(a) The Department of Administration shall develop and maintain electronic or digital standards for procurement. The Department of Administration shall consult with the Office of the State Controller, 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.

(a1) The Department of Administration shall comply with the State government-wide technical architecture for information technology, as required by the Information Resources Management Commission.

(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 Department of Administration shall utilize the Office of Information Technology Services as an Application Service Provider for an electronic procurement system. The Office of Information Technology Services shall operate this electronic procurement system, through State ownership or commercial leasing, in accordance with the requirements and operating standards developed by the Department of Administration and the financial reporting and accounting procedures of the Office of the State Controller.

(d) This section does not otherwise modify 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.

(e) The Board of Governors of The University of North Carolina shall exempt North Carolina State University and the University of North Carolina at Chapel Hill from the electronic procurement system authorized by this Article until May 1, 2003. Each exemption shall be subject to the Board of Governors' annual review and reconsideration. Exempted constituent institutions shall continue working with the North Carolina E-Procurement Service as that system evolves and shall ensure that their proposed procurement systems are compatible with the North Carolina E-Procurement Service so that they may take advantage of this service to the greatest degree possible. Before an exempted institution expands any electronic procurement system, that institution shall consult with the Joint Legislative Commission on Governmental Operations and the Joint Select Committee on Information Technology. By May 1, 2003, the General Assembly shall evaluate the efficacy of the State's electronic procurement system and the inclusion and participation of entities in the system.

(f) Any State entity, local school administrative unit, or community college operating a functional electronic procurement system established prior to

September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity subject to this section shall notify the Information Resources Management Commission by January 1, 2002, and annually thereafter, of its intent to participate in the North Carolina E-Procurement Service. (2000-67, s. 7.8; 2000-140, ss. 95(a), 95(b); 2001-424, s. 15.6(b); 2001-513, s. 28(a); 2002-126, ss. 27.1(a), 27.1(b), 27.1(c).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, ss. 27.1(a), 27.1(b), and 27.1(c), effective July 1, 2002, rewrote subsection (a); added subsection (a1); and rewrote subsection (c).

§ 143-53. Rules.

(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars ($25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars ($25,000) by the agency that awarded the contract.

(2) Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1 or G.S. 116-31.10. The purchasing delegation for securing offers (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of equipment,

materials, supplies or services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. Reverse auctions may only be utilized for the purchase or exchange of supplies, equipment, and materials as provided in G.S. 115C-522. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of equipment, materials, supplies, or services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars ($10,000). The Division may levy a fee, not to exceed one dollar ($1.00), for review of each waiver application.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

(1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;

(2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;

(3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;

(4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;

(5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and

(6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

Prior to adopting rules under this section, the Secretary of Administration may consult with the Advisory Budget Commission. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1; 1985 (Reg. Sess., 1986), c. 955, ss. 87, 88; 1987, c. 827, s. 216; 1989 (Reg. Sess., 1990), c. 936, s. 3(b); 1995, c. 256, s. 1; 1997-412, s. 3; 1998-217, s. 15; 1999-400, ss. 1, 2; 2002-107, s. 2.)

Editor's Note. —

Session Laws 2002-107, s. 3, provides: "Notwithstanding any other provision of law to the contrary, the Secretary may conduct a pilot program for reverse auctions. The reverse auctions shall be utilized only for the purchase or exchange of those supplies, equipment, and materials as provided in G.S. 115C-522, for use by the public school systems. The Secretary shall report the results of the pilot program to the Joint Select Committee on Information Technology, upon the convening of the 2003 General Assembly."

Effect of Amendments. — Session Laws 2002-107, s. 2, effective September 6, 2002, rewrote subdivision (a)(5).

§ 143-59.1. Contracts with certain foreign vendors.

(a) Ineligible Vendors. — The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor or an affiliate of the vendor that is incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the corporation's stock.

(b) Vendor Certification. — The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. — The following definitions apply in this section:

(1) Affiliate. — As defined in G.S. 105-163.010.

(2) Tax haven country. — Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles. (1999-341, s. 7; 2002-189, s. 6.)

Effect of Amendments. — Session Laws 2002-189, s. 6, effective December 1, 2002, and applicable to contracts entered into on or after that date, rewrote the section, adding subsection designations and catchlines, adding subdivision (a)(2), adding subsection (b), and adding subdivision (c)(2).

§ 143-59.2. Certain vendors prohibited from contracting with State.

(a) Ineligible Vendors. — A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business entity, within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934.

(b) Vendor Certification. — The Secretary of Administration shall require each vendor submitting a bid or contract to certify that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violation referenced in subsection (a) of this section within 10 years immediately prior to the date of the bid solicitation. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Void Contracts. — A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Secretary of Administration. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare. (2002-189, s. 5.)

Editor's Note. — Session Laws 2002-189, s. 9, makes this section effective December 1, 2002, and applicable to contracts entered into on or after that date.

Article 3B.

Energy Conservation in Public Facilities.

Part 2. Guaranteed Energy Savings Contracts for Governmental Units.

§ 143-64.17. Definitions.

As used in this Part:

(1) "Energy conservation measure" means a facility alteration, training, or services related to the operation of the facility, when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.

d. Heating, ventilating, or air-conditioning system modifications or replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumina-

tion is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.

f. Energy recovery systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.

h. Other energy conservation measures.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel costs, energy costs, or operating costs developed by the governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:

a. The name and address of the governmental unit.

b. The name, address, title, and telephone number of a contact person in the governmental unit.

c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

d. The date, time, and place where proposals must be received.

e. The evaluation criteria for assessing the proposals.

f. A statement reserving the right of the governmental unit to reject any or all the proposals.

g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 1; 1999-235, ss. 1, 2; 2002-161, s. 2.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. — Session Laws 2002-161, s. 2, effective January 1, 2003, and applicable to contracts entered into on or after that date, in the Part heading deleted "Local" preceding "Governmental Units"; and in the section, added subdivisions (2a) and (7), and deleted "local" preceding "governmental unit" throughout subdivision (6).

§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

(a) Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.

(c) In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit by a licensed architect or engineer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the information required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) The governmental unit shall select the qualified provider that it determines to best meet the needs of the governmental unit by evaluating all of the following:

(1) Prices offered.
(2) Proposed costs of construction, financing, maintenance, and training.
(3) Quality of the products proposed.
(4) Amount of energy savings.
(5) General reputation and performance capabilities of the qualified providers.
(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.
(7) Time specified in the proposals for the performance of the contract.
(8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter. (1993 (Reg. Sess., 1994), c. 775, s. 3; 2002-161, s. 3.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. — Session Laws 2002-161, s. 3, effective January 1, 2003, and applicable to contracts entered into on or after that date, rewrote the section.

§ 143-64.17B. Guaranteed energy savings contracts.

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:
(1) The term of the contract does not exceed 12 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.
(2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the governmental unit shall provide published notice of the time and place or of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the proposed award or meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the unit of government takes appropriate action to budget for its

own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 2; 1999-235, s. 3; 2002-161, s. 4.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. — Session Laws 2002-161, s. 4, effective January 1, 2003, and applicable to contracts entered into on or after that date, deleted "local" preceding "governmental unit" throughout; in subsection (b), inserted "time and place or of the" preceding "meeting at which" in the first sentence, and inserted "proposed award or" preceding "meeting" at the end of the second sentence; and in subsection (e), deleted "local" preceding "unit of government."

§ 143-64.17C: Repealed by Session Laws 2002, ch. 161, s. 5, effective January 1, 2003, and applicable to contracts entered into on or after that date.

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

§ 143-64.17D. Contract continuance.

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a direct or indirect pledge of the taxing power or full faith and credit of any governmental unit. (1993 (Reg. Sess., 1994), c. 775, s. 3; 2002-161, s. 6.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. — Session Laws 2002-161, s. 6, effective January 1, 2003, and applicable to contracts entered into on or after that date, substituted "direct or indirect pledge of the taxing power or full faith and credit of any governmental unit" for "debt, liability, or obligation of any local governmental unit or a pledge of the faith and credit of any unit of local government" in the second sentence.

§ 143-64.17F. State agencies to use contracts when feasible.

State governmental units shall evaluate the use of guaranteed energy savings contracts in reducing energy costs and may use those contracts when feasible and practical. The Department of Administration, through the State Energy Office, shall adopt rules for agency evaluation of guaranteed energy savings contracts. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer. (2002-161, s. 7.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Session Laws 2002-161, s. 13, made this section effective January 1, 2003, and applicable to contracts entered into on or after that date.

§ 143-64.17H. Guaranteed energy savings contract reporting requirements.

A State governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the State

Energy Office of the Department of Administration within 30 days of the date the contract is entered into. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract and shall evaluate whether expected savings have in fact been realized. (2002-161, s. 8.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Session Laws 2002-161, s. 13, made this section effective January 1, 2003, and applicable to contracts entered into on or after that date.

§ 143-64.17I. Installment and lease purchase contracts.

A local governmental unit may provide for the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease purchase contracts in accordance with and subject to the provisions of G.S. 160A-20 and G.S. 160A-19, as applicable. (2002-161, s. 8.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Session Laws 2002-161, s. 13, made this section effective January 1, 2003, and applicable to contracts entered into on or after that date.

§ 143-64.17J. Financing by State governmental units.

State governmental units may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part in the manner and to the extent set forth in Article 8 of Chapter 142 of the General Statutes or as otherwise authorized by law. (2002-161, s. 8.)

Editor's Note. — Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Session Laws 2002-161, s. 13, made this section effective January 1, 2003, and applicable to contracts entered into on or after that date.

§ 143-64.17K. Inspection and compliance certification for State governmental units.

The provisions of G.S. 143-341(3) shall not apply to any energy conservation measure for State governmental units provided pursuant to this Part, except as specifically set forth in this section. Except as otherwise exempt under G.S. 116-31.11, the following shall apply to all energy conservation measures provided to State governmental units pursuant to this Part:

(1) The provisions of G.S. 133-1.1.

(2) Inspection and certification by:

a. The applicable local building inspector under Part 4 of Article 18 of Chapter 153A of the General Statutes or Part 5 of Article 19 of Chapter 160A of the General Statutes; or

b. At the election of the State governmental unit, the Department of Administration under G.S. 143-341(3)d.

The cost of compliance with this section may be included in the cost of the project in accordance with G.S. 143-64.17A(c1) and may be included in the cost financed under Article 8 of Chapter 142 of the General Statutes. (2002-161, s. 8.)

Article 3C.

Contracts to Obtain Consultant Services.

§ 143-64.20. "Agency" defined; Governor's approval required.

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Contracts with Experts, Consultants, or Other Professional Advisors to Review Conversion Plans Are Exempt from Articles 3 and 3C of Chapter 143. — The Commissioner of Insurance has statutory authority to contract with experts, consultants, or other professional advisors to review conversion plans without adhering to the requirements set forth in Articles 3 and 3C of Chapter 143, G.S. 143-48 et seq. and G.S. 143-64.20 et seq., the only statutory requirement that must be met by the Commissioner is that the costs for the personal professional service contracts must not exceed an amount that is reasonable and appropriate for the review of the plan. See opinion of Attorney General to Peter A. Kolbe, General Counsel, North Carolina Department of Insurance, 2001 N.C. AG LEXIS 28 (8/24/01).

Contracts negotiated pursuant to G.S. 58-19-15(f) are not exempt from the requirements of Article 3C of Chapter 143, G.S. 143-64.20 et seq. See opinion of Attorney General to Peter A. Kolbe, General Counsel, North Carolina Department of Insurance, 2001 N.C. AG LEXIS 29 (10/3/01).

The State Employees' Comprehensive Major Medical Plan is exempt from the requirements of Article 3C of Chapter 143, G.S. 143-64.20 et seq., with respect to contracts to assist the plan in negotiating preferred provider networks. See opinion of Attorney General to Jack W. Walker, Executive Administrator, Teachers' & State Employees' Comprehensive Major Medical Plan, 2001 N.C. AG LEXIS 38 (8/23/01).

§ 143-64.21. Findings to be made by Governor.

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Compensation of Expert Retained to Assist in Reviewing Proposed Acquisition of Control. — Prior to granting written approval for a contract for the Commissioner of Insurance to retain an expert to assist in reviewing a proposed acquisition of control, the Governor must find that the estimated cost is reasonable as compared with the likely benefits or results. See opinion of Attorney General to Peter A. Kolbe, General Counsel, North Carolina Department of Insurance, 2001 N.C. AG LEXIS 29 (10/3/01).

Article 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005).

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This Section Does Not Apply to Subcontract Services Procured by Private Firms. — This section applies only to the procurement of architectural, engineering, or surveying services by state or local government entities and does not extend to subcontract services procured by private firms. See opinion of Attorney General to Jerry T. Carter, Executive Director, N.C. Board of Examiners for Engineers and Surveyors, 2001 N.C. AG LEXIS 23 (6/19/2001).

Legislative exemptions authorizing public "design-build" contracts are not intended to require strict compliance with this section; such should be presumed to supersede strict qualifications-based selection methods unless specifically stated otherwise in the authorizing legislation. See opinion of Attorney General to Jerry T. Carter, Executive Director, N.C. Board of Examiners for Engineers and Surveyors, 2001 N.C. AG LEXIS 23 (6/19/2001).

Award of Professional Services Contracts on Competitive Basis. — With respect to state-funded projects, professional services contracts may be awarded on a competitive basis in limited circumstances; however, before these contracts are awarded as a routine matter, the Department of Transportation should adopt rules and regulations governing their award. See opinion of Attorney General to Mr. Len Hill, P.E., Deputy Highway Administrator - Preconstruction, North Carolina Department of Transportation, 2000 N.C. AG LEXIS 3 (5/31/2000).

§ 143-64.32. Written exemption of particular contracts.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005).

ARTICLE 8.

Public Contracts.

§ 143-128. Requirements for certain building contracts.

(a) Preparation of specifications. — Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, shall have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system), refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all related work.
(2) Plumbing and gas fittings and accessories, and all related work.
(3) Electrical wiring and installations, and all related work.
(4) General work not included in subdivisions (1), (2), and (3) of this subsection relating to the erection, construction, alteration, or repair of any building.

Specifications for contracts that will be bid under the separate-prime system or dual bidding system shall be drawn as to permit separate and independent bidding upon each of the subdivisions of work enumerated in this subsection. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(a1) Construction methods. — The State, a county, municipality, or other public body shall award contracts to erect, construct, alter, or repair buildings pursuant to any of the following methods:

(1) Separate-prime bidding.
(2) Single-prime bidding.
(3) Dual bidding pursuant to subsection (d1) of this section.
(4) Construction management at risk contracts pursuant to G.S. 143-128.1.
(5) Alternative contracting methods authorized pursuant to G.S. 143-135.26(9).

(a2) Annually, on or before April 1st, beginning April 1, 2003, The University of North Carolina and all other public entities shall report to the Secretary of the Department of Administration on the effectiveness and cost-benefit of utilization of each of the construction methods authorized in G.S. 143-128(a1) that are used by the public entity. The reports, which shall be initially filed in the year in which the project is completed, shall be in the format and contain the data prescribed by the Secretary of Administration and shall include at least the following:

(1) The type of construction method used on the project.
(2) The total dollar value of building projects by specific project with costs.
(3) The bid costs and relevant post-bid costs.
(4) A detailed listing of all contractors and subcontractors used on the project indicating whether the contractor or subcontractor was an out-of-state contractor or subcontractor.
(5) If any contractor or subcontractor was an out-of-state contractor or subcontractor, the reasons why the contractor or subcontractor was selected.

The Secretary of the Department of Administration shall report to the General Assembly on or before May 1st each year on the information collected pursuant to this subsection.

(b) Separate-prime contracts. — When the State, county, municipality, or other public body uses the separate-prime contract system, it shall accept bids for each subdivision of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost. The contracts shall be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county, municipality, or other public body and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public entity to erect, construct, alter or repair any building or buildings, or parts of any building or buildings.

(c) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(d) Single-prime contracts. — All bidders in a single-prime project shall identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General.

The contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be nonresponsible or nonresponsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall incorporate by reference the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

When contracts are awarded pursuant to this section, the public body shall make available to subcontractors the dispute resolution process as provided for in subsection (f1) of this section.

(d1) Dual bidding. — The State, a county, municipality, or other public entity may accept bids to erect, construct, alter, or repair a building under both the single-prime and separate-prime contracting systems and shall award the contract to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the bids to perform the contract. In determining the system under which the contract will be awarded to the lowest responsible, responsive bidder, the public entity may consider cost of construction oversight, time for completion, and other factors it considers appropriate. The bids received as separate-prime bids shall be received, but not opened, one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor to the public entity under the separate-prime system. The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded pursuant to this section and the provisions of subsection (d) of this section shall apply to single-prime contracts awarded pursuant to this section.

(e) Project expediter; scheduling; public body to resolve project disputes. — The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on a project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for preparing the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule. Whenever separate contracts are awarded and separate contractors engaged for a project pursuant to this section, the public body may provide in the contract documents for resolution of project disputes through alternative dispute resolution processes as provided for in subsection (f1) of this section.

(f) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(f1) Dispute resolution. — A public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution process, which shall include mediation, to be used as an alterative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process will be available to all the parties involved in the public entity's construction project including the public entity, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors and shall be available for any issues arising out of the contract or construction process. The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars ($15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the costs of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contracts that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute.

(g) Exceptions. — This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is three hundred thousand dollars ($300,000) or less.

Notwithstanding the other provisions of this subsection, subsection (f1) of this section shall apply to any erection, construction, alteration, or repair of a building by a public entity. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620; 1987 (Reg. Sess., 1988), c. 1108, ss. 4, 5; 1989, c. 480, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 4, 5; c. 509, s. 79; 1998-137, s. 1; 1998-193, s. 1; 2001-496, ss. 3, 13; 2002-159, s. 42.)

Local Modification. — (As to Article 8) Alleghany: 1989, c. 211, s. 1; (As to Article 8) Cabarrus 2000-85 (expires June 30, 2005); Carteret: 2001-69, s. 1(a) (expires July 1, 2002); Chowan: 1989, c. 397, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1989, c. 177, s. 1; 1999-40, s. 1; 2002-5, s. 1 (expires July 1, 2003); Davidson: 1989, c. 398, s. 1; Durham: 1985 (Reg. Sess., 1986), c. 908; Forsyth: 1993, c. 128; 1998-104 (expires June 30, 2001); (as to Article 8) Forsyth: 2001-54; (as to Article 8) 2001-99 (expires June 30, 2006); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (as to G.S. 143-128) Greene: 1953, c. 718; Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); (as to Art. 8) 1997-37; 2001-135 (expires June 30, 2002); 2002-93, s. 2 (expires June 30, 2005); Mecklenburg: 1993 (Reg. Sess., 1994), c. 573, s. 1; New Hanover: 1983, c. 365; Pasquotank: 1989, c. 268, s. 3; 1989, c. 468, s. 1; (as to Article 8) Stanly: 2001-99 (expires June 30, 2006); Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; 2000-79, s. 1 (expires December 31, 2002); Tyrrell: 1983, c. 208; 1985, c. 120; 1987, c. 58, s. 1; 1987, c. 58, s. 2; Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; (as to Article 8) city of Charlotte: 1987, c. 329, s. 2; 1998-173, s. 1; 2002-93, s. 1 (expires January 1, 2007); 2000-26, s. 1; (as to Article 8) 2001-248, ss. 1, 2; (as to Article 8) 2001-329, s. 4; (as to Article 8) city of Durham: 1985, c. 714; 1985, c. 727; 1987, c. 789; 2001-350, s. 3; (As to Article 8) 1991, c. 107; city of Greensboro: 1995, c. 54, s. 1; (as to Article 8) city of Greenville: 1998-144; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Roanoke Rapids: 2001-245, s. 3; (as to Article 8) city of Winston-Salem: 2001-54; town of Ahoskie: 1987 (Reg. Sess., 1988), c. 884; town of Clayton: 1995, c. 125, s. 1; (as to Article 8) town of Garner: 1993, c. 281, s. 4; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Southern Shores: 1995, c. 70, s. 1 (expires October 1, 1998); town of Yadkinville: 1997-3, s. 1; (as to Article 8) village of Bald Head Island: 1989 (Reg. Sess., 1990), c. 925, s. 1; (as to Article 8) village of Pinehurst: 2001-66, s. 1.(a) (expires January 1, 2006); Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; (as to Article 8) College of the Albemarle in the city of Elizabeth City: 2001-66, s. 2.(a) (expires January 1, 2006); Albemarle Hospital Board of Trustees: 1989, c. 468, s. 2; (As to Article 8) Board of Trustees of Guilford Techni-

cal Community College: 2002-57, s. 2; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Currituck County Board of Education and City of Albemarle: 1989, c. 409, s. 1; Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expires December 31, 2005); (as to Article 8) Johnston County Board of Education: 1997-37 (expires July 30, 2000); 1999-102, s. 1; 2001-496, s. 10(b); (as to Chapter 143, Articles 3 and 8) Piedmont Triad International Authority: 1998-55, s. 11; 2002-146, s. 8 (expires January 1, 2010); (as to Article 8) Raleigh-Durham Airport Authority: 1998-141 (expires January 1, 2003); (as to Article 8) Rowan Salisbury Schools: 1998-78; (as to Article 8) Transylvania Schools: 1999-53, s. 1 (expires June 30, 2001); Tyrrell County Board of Education: 1983, c. 580; 1985, c. 120; Wake County Board of Education: 2001-44, ss. 2, 3 (expires July 1, 2005); (as to Article 8) University of North Carolina at Chapel Hill and East Carolina University: 1987, c. 803, s. 3; University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; (as to Article 8) New Hanover Regional Medical Center: 2001-496, s. 10(d) (expires December 31, 2007).

Effect of Amendments. —

Session Laws 2002-159, s. 42, effective October 11, 2002, inserted the second sentence in the first paragraph of subsection (b); and substituted "G.S. 143-135.26(11)" for "G.S. 143-135.26(12)" in the first sentence of subsection (f1).

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Definition of "Public Entity". — The term "public entity" includes all elected or appointed authorities of the state and their individual departments, commissions, committees, councils, including the constituent institutions of the University of North Carolina. See opinion of Attorney General to T. Brooks Skinner, Jr., General Counsel, North Carolina Department of Administration, 2002 N.C. AG LEXIS 13 (3/7/02).

§ 143-129. Procedure for letting of public contracts.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1999-40, s. 1; 2002-5, s. 1 (expires July 1, 2003); Forsyth: 1987 (Reg. Sess., 1988), c. 927; 1993, c. 128, s. 1; 1998-104 (expires June 30, 2001); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Greene: 1953, c. 718; Guilford: 1987 (Reg. Sess., 1988), c. 1010, s. 2; Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); Mecklenburg: 1987, cc. 184, 220, 823; 1989, c. 150, s. 1; 1993 (Reg. Sess., 1994), c. 709, s. 1; 1997-184, s. 1; Pasquotank: 1979, 2nd Sess., c. 1164; 1989, c. 268, s. 3; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; 2000-79, s. 1 (expires December 31, 2002); Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; city of Bessemer City: 1985 (Reg. Sess., 1986), c. 959; 1981, c. 89; 1987, cc. 151, 329, s. 1; 1991, c. 200; city of Charlotte: 1995, c. 273, s. 1; 2000-26, s. 1; 2002-91, s. 1; city of Durham: 1983, c. 458; 1991 (Reg. Sess., 1992), c. 992, s. 1; 2001-350, s. 3; city of Greensboro: 1987, c. 53, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1010, s. 2; 1995, c. 218, s. 1; city of Greenville; 1989, c. 18, s. 1; city of Lexington: 1987, c. 21; city of Kings Mountain: 1985 (Reg. Sess., 1986), c. 959; 1981, c. 89; city of Monroe: 1989, c. 18, s. 1; 2000-35, s. 1; city of Roanoke Rapids: 2001-245, s. 3; city of Rocky Mount; 1989, c. 18, s. 1; city of Shelby: 1987, c. 87; city of Wilson: 1985 (Reg. Sess., 1986), c. 871; 1987 (Reg. Sess., 1988), c. 1108, s. 11; city of Winston-Salem: 1985, c. 632; 1987, c. 575; 1987 (Reg. Sess., 1988), c. 927; town of Clayton: 1995, c. 125, s. 1; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Newport: 2000-97, s. 4 (one-time exemption before February 1, 2001); town of Southern Shores: 1995, c. 70, s. 1; town of Yadkinville, 1997-3, s. 1; Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; Albermarle Hospital Board of Trustees: 1989, c. 468, s. 2; Bladen County Board of Education: 1973, c. 891; Charlotte-Mecklenburg Board of Education: 1981, c. 477; 1999-207, ss. 2, 3, 4; 2001-496, s. 10(c); Wake County Board of Education: 2001-44, ss. 1-3 (expires July 1, 2005); Forsyth/Stokes Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987 (Reg. Sess., 1988), c. 927; Lee Board of Education: 1953, c. 228; University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1.

OPINIONS OF ATTORNEY GENERAL

Construction of Correctional Facilities. — The public bidding requirements of Article 8, Chapter 143, G.S. 143-128 et seq., are not applicable to the construction of the three close security correctional facilities authorized by G.S. 148-37(b1), as the statute clearly contemplates that such facilities will be constructed by the private sector using private funds. See opinion of Attorney General to Mr. Robert M. High, Deputy Treasurer, N. C. Department of State Treasurer, 2000 N.C. AG LEXIS 34 (4/17/2000).

§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are not governed by this Article but instead are governed by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128.2 and G.S. 143-135.3. (1993 (Reg. Sess., 1994), c. 775, s. 4; 1995, c. 509, s. 135.2(k); 2001-496, s. 3.3; 2002-161, s. 11.)

Editor's Note. —
Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. —
Session Laws 2002-161, s. 11, effective January 1, 2003, and applicable to contracts entered into on or after that date, substituted "not governed by this Article but instead are governed" for "governed solely" and substituted "G.S. 143-128.2 and G.S. 143-135.3" for "G.S. 143-128.2."

§ 143-129.9. Alternative competitive bidding methods.

(a) A political subdivision of the State may use any of the following methods to obtain competitive bids for the purchase of apparatus, supplies, materials, or equipment as an alternative to the otherwise applicable requirements in this Article:

(1) Reverse auction. — For purposes of this section, "reverse auction" means a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The bidders' prices may be revealed during the reverse auction. A reverse auction may be conducted by the political subdivision or by a third party under contract with the political subdivision. A political subdivision may also conduct a reverse auction through the State electronic procurement system, and compliance with the procedures and requirements of the State's reverse auction process satisfies the political subdivision's obligations under this Article.

(2) Electronic bidding. — A political subdivision may receive bids electronically in addition to or instead of paper bids. Procedures for receipt of electronic bids for contracts that are subject to the requirements of G.S. 143-129 shall be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as is provided for with sealed paper bids.

(b) The requirements for advertisement of bidding opportunities, timeliness of the receipt of bids, the standard for the award of contracts, and all other requirements in this Article that are not inconsistent with the methods authorized in this section shall apply to contracts awarded under this section.

(c) Reverse auctions shall not be utilized for the purchase or acquisition of construction aggregates, including, but not limited to, crushed stone, sand, and gravel. (2002-107, s. 1.)

Editor's Note. — Session Laws 2002-107, s. 6, as amended by Sesson Laws 2002-159, s. 64(a), made this section effective September 6, 2002, and applicable to bidding opportunities advertised on or after that date.

Session Laws 2002-107, s. 3, provides: "Notwithstanding any other provision of law to the contrary, the Secretary may conduct a pilot program for reverse auctions. The reverse auctions shall be utilized only for the purchase or exchange of those supplies, equipment, and materials as provided in G.S. 115C-522, for use by the public school systems. The Secretary shall report the results of the pilot program to the Joint Select Committee on Information Technology, upon the convening of the 2003 General Assembly."

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1999-40, s. 1; 2002-5, s. 1 (expires July 1, 2003); Davie: 1997-331, s. 3 (expires July 1, 1999); Forsyth: 1993, c. 128, s. 1; 1998-104 (expires June 30, 2001); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); Surry: 2000-79, s. 1 (expires December 31, 2002); city of Charlotte: 2000-26, s. 1; 2002-91, s. 1; city of Durham: 2001-350, s. 3; city of Greensboro: 1951, c. 707, s. 5; 1987, c. 53, s. 3; 1995, c. 218, s. 2; city of Winston-Salem: 1985, c. 632; 1987, c. 575; town of Clayton: town of Manteo: 1995, c. 125, s. 1; town of Southern Shores: 1995, c. 70, s. 1; town of Sunset Beach: 1993, c. 381, s. 3; 1995, c. 124; 1995 (Reg. Sess., 1996), c. 732; 1997-63; town of Yadkinville: 1997-3, s. 1; Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1.

§ 143-132. Minimum number of bids for public contracts.

Local Modification. — Alamance, and municipalities and local school administrative units within that county: 1999-93, s. 1; Beaufort, and municipalities and local school administrative units within that county: 1999-93, s. 1; Bertie: 1953, c. 1257; Camden, and municipalities and local school administrative units within that county: 1999-93, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Currituck, and municipalities and local school administrative units within that county: 1999-93, s. 1; Dare: 1999-40, s. 1; 2002-5, s. 1 (expires July 1, 2003); Forsyth: 1993, c. 128, s. 1; 1998-104 (expires June 30, 2001); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Northampton: 1953, c. 1257; Pasquotank and Perquimans, and municipalities and local school administrative units within those counties: 1999-93, s. 1; Surry: 1993 (Reg. Sess., 1994), c. 705. s. 1; 2000-79, s. 1 (expires December 31, 2002); Wilson: 1991, c. 200; city of Durham: 2001-350, s. 3; city of Elizabeth City: 2001-227, s. 1; city of Roanoke Rapids: 2001-245, s. 3; town of Clayton: 1995, c. 125, s. 1; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Southern Shores: 1995, c. 70, s. 1; town of Yadkinville: 1997-3, s. 1; Alamance-Caswell Area Mental Health, Development Disabilities and Substance Abuse Authority: 1987, c. 120; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Wake County Board of Education: 2001-44, ss. 2, 3 (expires July 1, 2005); Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1.

§ 143-133. No evasion permitted.

Local Modification. — Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005).

§ 143-135. Limitation of application of Article.

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the

agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13; 1995, c. 274, s. 1.)

Editor's Note. — This section has been set out in the Interim Supplement to correct an error appearing in 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 may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget 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 change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.

(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 International Building Code of the International Code Council, the Standard Building Code of the Southern Building Code Congress International, Inc., the Uniform Building Code of the International Conference of Building Officials, the National Building Code of the Building Officials and Code Administrators, Inc., the National Electric Code, the Life Safety Code, the National Fuel Gas Code, the Fire Prevention Code of the National Fire Protection Association, the Safety Code for Elevators and Escalators, and the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, and standards promulgated by the American National Standards Institute, Standards Underwriters' Laboratories, Inc., and similar national or international 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.

Handbooks providing explanatory material on Code provisions shall be provided no later than January 1, 2000, and shall be updated with each 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. Approved rules shall become effective in accordance with G.S. 150B-21.3. 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 sub-

stantial 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) **(Effective until June 30, 2003)** 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
Office of Juvenile Justice	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
Department of Cultural Resources [State Library]	1
Supreme Court Library	1
Legislative Library	1

G.S. 143-138(g) is set out twice. See notes.

OFFICIAL OR AGENCY	NUMBER OF COPIES
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. The proceeds from sales of the Building Code shall be credited to the Department of Insurance Fund under G.S. 58-6-25.

(g) **(Effective June 30, 2003)** 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.)

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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
Office of Administrative Hearings	1
Rules Review Commission	1

G.S. 143-138(g) is set out twice. See notes.

OFFICIAL OR AGENCY	NUMBER OF COPIES
Schools	
All state-supported colleges and universities in the State of North Carolina	*1each
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 compliance 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

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
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	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
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 approved 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); 2001-141, ss. 1, 2, 3, 4; 2001-421, ss. 1.1, 1.2, 1.5; 2001-424, s. 12.2(b); 2002-144, s. 5.)

Subsection (g) Set Out Twice. — The first version of subsection (g) is effective until June 30, 2003. The second version of subsection (g) is effective June 30, 2003.

Editor's Note. —

Session Laws 2002-144, s. 11, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-144, s. 5, effective July 1, 2002 and expiring June 30, 2003, in subsection (g), deleted the Clerk of the Superior Court from the list of goverment officials who receive a copy of the State Building Code, changed the number of copies of the State Building Code received by the Department of Cultural Resources State Library from 5 to 1, changed the number of copies of the State Building Code received by the Supreme Court Library from 2 to 1, and added the second sentence in the last paragraph.

OPINIONS OF ATTORNEY GENERAL

County regulations requiring that carbon monoxide alarms be installed in new and existing residential dwelling units, as well as other structures, were likely contrary to subsection (e) and unenforceable to the extent they applied to new construction; however, the regulations could be cured by making them applicable only to existing buildings. See opinion of Attorney General to Grover L. Sawyer, P.E., Deputy Commissioner, Department of Insurance, 2001 N.C. AG LEXIS 3 (2/5/2001).

Article 9A.

North Carolina Manufactured Housing Board — Manufactured Home Warranties.

§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of nine members as follows:

(1) The Commissioner of Insurance or his designee.
(2) A manufactured home manufacturer.
(3) A manufactured home dealer.
(4) A representative of the banking and finance business.
(5) A representative of the insurance industry.
(6) A manufactured home supplier.
(7) A set-up contractor.
(8) Two representatives of the general public.

The Commissioner or his designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufac-

tured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier and set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty-five percent (85%) of these funds shall be credited to the General Fund.

(b) In accordance with the provisions of this Article, the Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Article.

(4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.

(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer. (1981, c. 952, s. 2; 1983, c. 717, ss. 107-109, 114; 1987, c. 429, ss. 6, 7, 19, c. 827, s. 1; 1999-393, s. 1.)

Editor's Note. — Session Laws 2002-144, s. 4, effective July 1, 2002 and expiring on June 30, 2003, amended G.S. 143-10 by rewriting the last paragraph in subsection (a). The apparent intent was to amend the last paragraph of G.S. 143-143.10(a) to read as follows: "Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. Fees collected by the Board under this Article shall be credited to the Department of Insurance Fund under G.S. 58-6-25." At the direction of the Revisor of Statutes, the amendment has not been implemented in the section above.

Article 9B.

Uniform Standards Code For Manufactured Homes.

§ 143-148. Certain structures excluded from coverage.

Editor's Note. — Session Laws 2002-123, s. 5, provides: "The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without begin subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes."

Article 10.

Various Powers and Regulations.

§ 143-153. Keeping swine near State institutions; penalty.

OPINIONS OF ATTORNEY GENERAL

This section does not protect any church or other non-governmental organization. See opinion of Attorney General to The Honorable Cary Allred, The North Carolina General Assembly, 2001 N.C. AG LEXIS 14 (6/12/2001).

The statute does not apply to protect local public schools. See opinion of Attorney General to The Honorable Cary Allred, The North Carolina General Assembly, 2001 N.C. AG LEXIS 14 (6/12/2001).

Article 12D.

Separation Allowances for Law-Enforcement Officers.

§ 143-166.41. Special separation allowance.

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11b) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution who qualifies under this section shall receive, beginning on the last day of the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(a) or G.S. 143-166(y), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to him for each year of creditable service. The allowance shall be paid in 12 equal installments on the last day of each month. To qualify for the allowance the officer shall:

(1) Have (i) completed 30 or more years of creditable service or, (ii) have attained 55 years of age and completed five or more years of creditable service; and

(2) Not have attained 62 years of age; and

(3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

(1) The death of the officer;

(2) The last day of the month in which the officer attains 62 years of age; or

(3) The first day of reemployment by any State department, agency, or institution, except that this subdivision does not apply to an officer returning to State employment in a position exempt from the State Personnel Act in an agency other than the agency from which that officer retired.

(d) This section does not affect the benefits to which an individual may be entitled from State, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f). (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143; 1985 (Reg. Sess., 1986), c. 1014, ss. 51, 52; 2002-126, s. 28.14.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 28.14, effective July 1, 2002, rewrote subsection (c).

CASE NOTES

Eligibility. — Since the initial eligibility requirement for a separation allowance under G.S. 143-166.41 was that police officers retire on a service retirement, police officer was not eligible because he retired on a disability retirement. Cochrane v. City of Charlotte, 148 N.C. App. 621, 559 S.E.2d 260, 2002 N.C. App. LEXIS 45 (2002).

Police officer who retired on disability retirement was not eligible for a special separation allowance because he did not retire on a service retirement and was, therefore, not among the class of persons statutorily eligible for a special separation allowance. Cochrane v. City of Charlotte, 148 N.C. App. 621, 559 S.E.2d 260, 2002 N.C. App. LEXIS 45 (2002).

Creditable Service. — When a police officer retired on disability retirement, his time spent on disability retirement could not be considered "creditable service" for purposes of determining eligibility for a special separation allowance. Cochrane v. City of Charlotte, 148 N.C. App. 621, 559 S.E.2d 260, 2002 N.C. App. LEXIS 45 (2002).

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

Legal Periodicals. —
For article, "Now Open for Development?: The Present State of Regulation of Activities in North Carolina Wetlands," see 79 N.C.L. Rev. 1667 (2001).

§ 143-212. Definitions.

OPINIONS OF ATTORNEY GENERAL

The Water Quality Committee of the Environmental Management Commission is authorized to adopt rules requiring permits for impacts to isolated wetlands and surface waters. See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

§ 143-215. Effluent standards or limitations.

CASE NOTES

Cited in N.C. ex rel. McDevitt v. Acme Petro. & Fuel Co., — F.3d —, 2002 U.S. App. LEXIS 4538 (4th Cir. Mar. 19, 2002).

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

CASE NOTES

Applied in Dixie Lumber Co. of Cherryville, Inc. v. N.C. Dep't of Env't, Health & Natural Res., 150 N.C. App. 144, 563 S.E.2d 212, 2002 N.C. App. LEXIS 407 (2002), cert. denied, 356 N.C. 161, 568 S.E.2d 192 (2002).

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission is authorized to adopt rules requiring permits for impacts to isolated wetlands and surface waters. See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

Editor's Note. —

Session Laws 2002-126, s. 12.6(a), provides: "The Department of Environment and Natural Resources may use up to two million five hundred thousand dollars ($2,500,000) from the Inactive Hazardous Sites Cleanup Fund established in G.S. 130A-310.11 for the 2002-2003 fiscal year for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials."

Session Laws 2002-126, s. 12.6(b), provides: "Notwithstanding the provisions of G.S. 143-215.3A, the Department of Environment and Natural Resources also may use up to five hundred thousand dollars ($500,000) for the 2002-2003 fiscal year from the fees collected for water quality permits under G.S. 143-215.3D and credited to the Water Permits Fund if both of the following conditions are satisfied:

"(1) The detoxification and remediation of the landfill located in Warren County cannot be completed without funds in addition to those that are authorized for this purpose under subsection (a) of this section.

"(2) All other funds, including all contingency funds, available to the Department for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials have been spent or encumbered."

Session Laws 2002-126, s. 12.6(c), provides: "It is the intent of the General Assembly that the funds authorized under this section will be sufficient to complete the detoxification and remediation of this landfill, based on representations made to the General Assembly."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-215.3D. Fee schedule for water quality permits.

Editor's Note. —

Session Laws 2002-126, s. 12.6(a), provides: "The Department of Environment and Natural Resources may use up to two million five hundred thousand dollars ($2,500,000) from the Inactive Hazardous Sites Cleanup Fund established in G.S. 130A-310.11 for the 2002-2003 fiscal year for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials."

Session Laws 2002-126, s. 12.6(b), provides: "Notwithstanding the provisions of G.S. 143-215.3A, the Department of Environment and Natural Resources also may use up to five hundred thousand dollars ($500,000) for the 2002-2003 fiscal year from the fees collected for water quality permits under G.S. 143-215.3D and credited to the Water Permits Fund if both of the following conditions are satisfied:

"(1) The detoxification and remediation of the landfill located in Warren County cannot be completed without funds in addition to those that are authorized for this purpose under subsection (a) of this section.

"(2) All other funds, including all contingency funds, available to the Department for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials have been spent or encumbered."

Session Laws 2002-126, s. 12.6(c), provides: "It is the intent of the General Assembly that the funds authorized under this section will be sufficient to complete the detoxification and remediation of this landfill, based on representations made to the General Assembly."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the

Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143-215.8B. Basinwide water quality management plans.

Cross References. — As to the Roanoke River Basin Bi-State Commission and the Roanoke River Basin Authority Committee, see G.S. 77-90 et seq.

§ 143-215.9A. Reports.

(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year on the status of facilities discharging into surface waters during the previous fiscal year. The report shall include:

(1) The names and locations of all persons permitted under G.S. 143-215.1(c).

(2) The number of compliance inspections of persons permitted under G.S. 143-215.1(c) that the Department has conducted since the last report.

(3) The number of violations found during each inspection, including the date on which the violation occurred and the nature of the violation; the status of enforcement actions taken and pending; and the penalties imposed, collected, and in the process of being negotiated for each violation.

(4) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the report pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) Repealed by Session Laws 2002-148, s. 5. (1998-221, s. 4.1; 2002-148, s. 5.)

Effect of Amendments. — Session Laws 2002-148, s. 5, effective October 9, 2002, rewrote the section.

Part 1A. Animal Waste Management Systems.

§ 143-215.10A. Legislative findings and intent.

Annual Inspection Pilot Program. — Session Laws 1997-443, s. 15.4, as amended by Session Laws 1999-329, ss. 3.1, 3.3, by Session Laws 2001-254, s. 5, and by Session Laws 2002-176, ss. 1.1, 1.2, provides that the Department of Environment and Natural Resources shall develop and implement a pilot program, to begin no later than 1 November 1997, and to terminate 1 September 2003, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes, choosing two counties to participate in the program (Columbus and Jones), and adding Brunswick County to the program. The Division of Soil and Water Conservation of the Department of Environment and Natural Resources is to conduct inspections of animal operations in those three counties at least once a year for violations of water quality standards and compliance. In addition, the Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, is to submit interim reports no later than 15 October 1999, 15 April 2000, 15 October 2000, 15 April 2001, 15 October 2001, 15 April 2002, and 15 April 2003, and shall submit a final report no later than 1 October 2003 to the Environmental Review Commission and to the Fiscal Research Division, which reports shall indicate whether the pilot program has increased the effective-

ness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. 143-215.10F. The final report is to include a recommendation as to whether to continue or expand the pilot program under the act, which recommendation may be submitted to the 2003 General Assembly.

CASE NOTES

Statutory Intent. — Animal Waste Management Systems component of the statewide regulations indicated the General Assembly's intent to adopt a comprehensive, statewide approach to the regulation of animal waste systems, preempting a county's attempt to do the same. Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

§ 143-215.10B. Definitions.

CASE NOTES

Applied in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

§ 143-215.10C. Applications and permits.

OPINIONS OF ATTORNEY GENERAL

Certain Animal Feeding Operations (CAFOs). — Subsection (b) is consistent with and at least as stringent as the federal NPDES requirements for certain animal feeding operations and, therefore, no permit terms can excuse a discharge of pollution to waters except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. See opinion of Attorney General to Daniel C. Oakley, General Counsel, North Carolina Department of Environment and Natural Resources, 2002 N.C. AG LEXIS 17 (5/17/02).

Co-Permittees on NPDES General CAFO Permit. — Any entity, including an integrator, that exercises substantial operational control over CAFOs and the owner/ooperator of the animal operation such that it can fairly be determined to be "constructing or operating" an animal waste management system, can be included as a required co-permittee on the NPDES general CAFO permit. See opinion of Attorney General to Daniel C. Oakley, General Counsel, North Carolina Department of Environment and Natural Resources, 2002 N.C. AG LEXIS 17 (5/17/02).

CASE NOTES

Applied in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

§ 143-215.10M. Reports.

(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

(1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report.
(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation has conducted since the last report.
(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation that have been conducted since the last report.
(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation since the last report.
(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation since the last report.
(6) The number of compliance inspections of animal waste management systems that the Division of Water Quality has conducted since the last report.
(7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water Quality since the last report.
(8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.
(9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.
(10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) Repealed by Session Laws 2002-148, s. 6 effective October 9, 2002. (1998-221, s. 4.2; 2002-148, s. 6.)

Effect of Amendments. — Session Laws 2002-148, s. 6, effective October 9, 2002, in subsection (a), rewrote the introductory paragraph, and deleted "and a total for that calendar year" following "last report" at the end of subdivisions (1), (2), (3), (4), (5), and (6); and repealed subsection (c), requiring quarterly status reports.

Part 6. Floodplain Regulation.

§ 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 Resources Conservation Service, the Tennessee Valley Authority, the Federal Emergency Management Agency, the North Carolina Department 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; 2002-165, s. 1.6.)

Effect of Amendments. — Session Laws 2002-165, s. 1.6, effective October 23, 2002, substituted "Natural Resources Conservation Service" for "Natural Resource Conservation Service" in subdivision (a)(1).

Part 9. Nonpoint Source Pollution Control Program.

§ 143-215.74. Agriculture cost share program.

(a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The program shall be created, implemented, and supervised by the Soil and Water Conservation Commission.

(b) The program shall be subject to the following requirements and limitations:

(1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the water courses of the State.

(2) The program shall initially include the present 16 nutrient sensitive watershed counties and 17 additional counties.

(3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.

(4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.

(5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sedimentation control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality.

(6) Except as provided in subdivision (8) of this subsection, State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the cost, which may include in-kind support of the practice, with a maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

(7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.

(8) For practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the program shall be limited to seventy-five percent (75%) of the average cost of

each practice, with the remainder paid from funding from the Conservation Reserve Enhancement Program, other available federal funds, other State funds, or the assisted farmer, whose contribution may include in-kind support of the practice.

(c) The program shall be reviewed, prior to implementation, by the Committee created by G.S. 143-215.74B. The Technical Review Committee shall meet quarterly to review the progress of this program.

(d) State funds for the program shall remain available until expended for the program.

(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality. (1985 (Reg. Sess., 1986), c. 1014, s. 149(a); 1987, c. 827, s. 154; c. 830, s. 102; 1995 (Reg. Sess., 1996), c. 626, ss. 9, 10; 1996, 2nd Ex. Sess., c. 18, s. 27.22(a), (b); 1997-496, s. 15; 1998-221, s. 3.1; 2002-165, s. 2.18.)

Effect of Amendments. — Session Laws 2002-165, s. 2.18, effective October 23, 2002, substituted "sedimentation control" for "sediment control" in subdivision (b)(5).

Article 21A.

Oil Pollution and Hazardous Substances Control.

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

CASE NOTES

Company as "Operator" of Two Storage Tanks. — Substantial evidence, including evidence that only petitioner company's employees used two underground storage tanks and that the company's employees maintained the tanks, supported the finding of respondent, the North Carolina Department of Environment and Natural Resources, that the company was the "operator" of the tanks within the meaning of G.S. 143-215.94A(8). Dixie Lumber Co. of Cherryville, Inc. v. N.C. Dep't of Env't, Health & Natural Res., 150 N.C. App. 144, 563 S.E.2d 212, 2002 N.C. App. LEXIS 407 (2002), cert. denied, 356 N.C. 161, 568 S.E.2d 192 (2002).

§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

CASE NOTES

Cited in Dixie Lumber Co. of Cherryville, Inc. v. N.C. Dep't of Env't, Health & Natural Res., 150 N.C. App. 144, 563 S.E.2d 212, 2002 N.C. App. LEXIS 407 (2002), cert. denied, 356 N.C. 161, 568 S.E.2d 192 (2002).

§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

CASE NOTES

Reimbursement Properly Denied for Failure to Pay Operator Fee. — Where substantial evidence supported the finding by respondent, the North Carolina Department of Environment and Natural Resources, that petitioner company was the "operator" of two underground petroleum storage tanks and it was undisputed that the company had not paid the operator fees required by G.S. 143-215.94C(a), the department properly determined that, pursuant to G.S. 143-215.94E(g)(3) and N.C. Admin. Code Tit. 15A, R. 2P.0401(b), the company was not entitled to reimbursement for the its costs of cleaning up certain petroleum releases from the tanks. Dixie Lumber Co. of Cherryville, Inc. v. N.C. Dep't of Env't, Health & Natural Res., 150 N.C. App. 144, 563 S.E.2d 212, 2002 N.C. App. LEXIS 407 (2002), cert. denied, 356 N.C. 161, 568 S.E.2d 192 (2002).

§ 143-215.94E. Rights and obligations of the owner or operator.

CASE NOTES

Reimbursement Properly Denied for Failure to Pay Operator Fee. — Where substantial evidence supported the finding by respondent, the North Carolina Department of Environment and Natural Resources, that petitioner company was the "operator" of two underground petroleum storage tanks and it was undisputed that the company had not paid the operator fees required by G.S. 143-215.94C(a), the department properly determined that, pursuant to G.S. 143-215.94E(g)(3) and N.C. Admin. Code Tit. 15A, R. 2P.0401(b), the company was not entitled to reimbursement for the its costs of cleaning up certain petroleum releases from the tanks. Dixie Lumber Co. of Cherryville, Inc. v. N.C. Dep't of Env't, Health & Natural Res., 150 N.C. App. 144, 563 S.E.2d 212, 2002 N.C. App. LEXIS 407 (2002), cert. denied, 356 N.C. 161, 568 S.E.2d 192 (2002).

Relationship to Regulation Regarding Timing of Fee Payment. — The requirement of N.C. Admin. Code Tit. 15A, R. 2P.0401(b) that the fees assessed to operators of underground petroleum storage tanks must be paid prior to the discovery of the release of petroleum does not conflict with G.S. 143-215.94E(g)(3). Dixie Lumber Co. of Cherryville, Inc. v. N.C. Dep't of Env't, Health & Natural Res., 150 N.C. App. 144, 563 S.E.2d 212, 2002 N.C. App. LEXIS 407 (2002), cert. denied, 356 N.C. 161, 568 S.E.2d 192 (2002).

§ 143-215.94M. Reports.

(a) The Secretary shall present an annual report to the Environmental Review Commission which shall include at least the following:

(1) A list of all discharges or releases of petroleum from underground storage tanks;

(2) A list of all cleanups requiring State funding through the Noncommercial Fund and a comprehensive budget to complete such cleanups;

(3) A list of all cleanups undertaken by tank owners or operators and the status of these cleanups;

(4) A statement of receipts and disbursements for both the Commercial Fund and the Noncommercial Fund;

(5) A statement of all claims against both the Commercial Fund and the Noncommercial Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations;

(6) The adequacy of both the Commercial Fund and the Noncommercial Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Commercial Fund and the Noncommercial Fund; and

(7) A statement of the condition of the Loan Fund and a summary of all activity under the Loan Fund.

(b) The report required by this section shall be made by the Secretary on or before 1 September of each year. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 12, 16; 1991, c. 538, s. 11; 1993, c. 400, s. 15; c. 402, s. 6; 2002-148, s. 7.)

Effect of Amendments. — Session Laws 2002-148, s. 7, effective October 9, 2002, substituted "an annual report" for "a semiannual report" in the introductory paragraph of subsection (a); and rewrote subsection (b).

Part 2B. Underground Storage Tank Regulation.

§ 143-215.94W. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who:

(1) Violates any provision of this Part or rule adopted pursuant to this Part.

(2) Fails to apply for or to secure a permit required by this Part.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any permit issued 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 or fails to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11.

(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 a rule implementing this Part.

(9) Knowingly makes a false statement of a 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 the purpose of conducting a lawful inspection provided for in this Part.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. 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 of 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 and a stipulation of the facts on which the assessment 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 remission requests and his 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 has his or its principal place of business 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 court 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 has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 17.

(h) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 377, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 17; 1998-215, s. 69; 2002-90, s. 6.)

Editor's Note. — Session Laws 2002-90, s. 8, provides in part: "This act applies retroactively to any cleanup of 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 except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

Effect of Amendments. — Session Laws 2002-90, s. 6, effective retroactively to 1 September 2001, added "or fails to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11" at the end of subdivision (a)(5). See editor's note for applicability.

§ 143-215.94Y. Enforcement procedures; injunctive relief.

Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part or has failed to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in

the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part, the rules of the Commission, or the failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11 has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part or for failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11. (1995, c. 377, s. 3; 2002-90, s. 7.)

Editor's Note. — Session Laws 2002-90, s. 8, provides in part: "This act applies retroactively to any cleanup of 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 except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

Effect of Amendments. — Session Laws 2002-90, s. 7, effective retroactively to 1 September 2001, added provisions pertaining to a failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11 three times, and substituted "rules" for "regulations." See editor's note for applicability.

Part 6. Dry-Cleaning Solvent Cleanup.

(Repealed effective January 1, 2012 — See editor's notes)

§ 143-215.104S. (Repealed effective January 1, 2012 — See editor's notes) Appeals.

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F 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. The Commission shall not delegate its authority to make a final agency decision pursuant to this section. (1997-392, s. 1; 2000-19, s. 16; 2002-165, s. 1.5.)

Effect of Amendments. — Session Laws 2002-165, s. 1.5, effective October 23, 2002, substituted "G.S. 143-215.104F" for "G.S. 143-215.104E" in the first sentence.

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 (SO2) allowances and oxides of nitrogen (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. 105-449.60, 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; 2002-4, s. 3; 2002-165, s. 1.7.)

Editor's Note. —

Session Laws 2002-4, s. 15, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-4, s. 3, effective June 20, 2002, in subdivision (a)(8), substituted "sulfur dioxide (SO2) allowances and oxides of nitrogen" for "sulfur dioxide allowances and nitrogen oxides."

Session Laws 2002-165, s. 1.7, effective October 23, 2002, substituted "G.S. 105-449.60" for "G.S. 119-16" in subdivision (a)(9).

§ 143-215.107B. Statewide goals for reduction in emissions of nitrogen oxides; report.

Editor's Note. —

Session Laws 2002-4, which enacted G.S. 143-215.107D and G.S. 62-133.6, in ss. 10-14, provide: "It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, petitions pursuant to 42

U.S.C. § 7426, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those required by G.S. 143-215.107D, as enacted by Section 1 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

"The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2005.

"The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required by G.S. 143-215.107D, as enacted by Section 1 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of mercury from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of mercury is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide (CO2) from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide (CO2). The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of carbon dioxide (CO2) from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of carbon dioxide (CO2) is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"On or before 1 June of each year, the Department of Environment and Natural Resources and the Utilities Commission shall report on the implementation of this act to the Environmental Review Commission and the Joint Legislative Utility Review Committee. The first report required by this section shall be submitted no later than 1 June 2003."

Session Laws 2002-4, s. 15, contains a severability clause.

§ 143-215.107D. Emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from certain coal-fired generating units.

(a) As used in this section:

(1) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(2) "Investor-owned public utility" means an investor-owned public utility, as defined in G.S. 62-3.

(b) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 75,000 tons of oxides of nitrogen (NOx) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 35,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 31,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2009.

(c) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 75,000 tons or less of oxides of nitrogen (NOx) in calendar year 2000 shall not collectively emit from the coal-fired generating units that it owns or operates more than 25,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(d) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 225,000 tons of sulfur dioxide (SO2) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 150,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 80,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(e) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 225,000 tons or less of sulfur dioxide (SO2) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 100,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 50,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(f) Each investor-owned public utility to which this section applies may determine how it will achieve the collective emissions limitations imposed by this section. Compliance with the emissions limitations set out in this section does not alter the obligation of any person to comply with any other federal or State law, regulation, or rule related to air quality or visibility. This subsection shall not be construed to limit the authority of the Commission to impose specific limitations on the emission of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from an individual coal-fired generating unit owned or operated by an investor-owned public utility.

(g) A coal-fired generating unit that is subject to the collective emissions limitations set out in this section on 1 July 2002 shall remain subject to the collective emissions limitations whether or not it thereafter continues to be owned or operated by an investor-owned public utility.

(h) The Commission shall require that any permit or modified permit issued for a coal-fired generating unit that is subject to this section include conditions that provide for testing, monitoring, record keeping, and reporting adequate to assure compliance with the requirements of this section.

(i) The Governor may enter into an agreement with an investor-owned public utility under which the investor-owned public utility voluntarily agrees to transfer to the State any emissions allowances acquired or that may be acquired by the investor-owned public utility pursuant to 42 U.S.C. §§ 7651-7651o, as implemented by 40 Code of Federal Regulations §§ 73.1 through 73.90 (1 July 2001 Edition); 42 U.S.C. 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (1 July 2001 Edition), related federal regulations, and the associated State Implementation Plan; 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (1 July 2001 Edition) and related federal regulations; or any similar program established under federal law that result from compliance with the emissions limitations set out in this section. An agreement entered into pursuant to this subsection shall be binding and shall be enforceable by specific performance. If the Governor enters into an agreement that provides for the transfer of emissions allowances to the State, the Governor shall file verified copies of the agreement with the Attorney General, the Secretary of State, the State Treasurer, the Secretary of Environment and Natural Resources, and the Utilities Commission. The State Treasurer shall hold all emissions allowances that are transferred to the State as provided in this subsection in trust for the people of this State and shall sell, trade, transfer, or otherwise dispose of the emissions allowances only as the General Assembly shall provide by law.

(j) An investor-owned public utility that is subject to the emissions limitations set out in this section shall submit to the Utilities Commission and to the Department on or before 1 April of each year a verified statement pursuant to subsection (i) of G.S. 62-133.6. (2002-4, s. 1.)

Cross References. — As to recovery of environmental compliance costs, see G.S. 62-133.6.

Editor's Note. — Session Laws 2002-4, s. 16, provides: "This act is effective when it becomes law except that G.S. 143-215.107D(i), as enacted by Section 1 of this act, is effective retroactively to 1 June 2002."

Session Laws 2002-4, ss. 10-14, provide: "It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, petitions pursuant to 42 U.S.C. § 7426, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those required by G.S. 143-215.107D, as enacted by Section 1 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

"The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2005.

"The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and sul-

fur dioxide (SO2) required by G.S. 143-215.107D, as enacted by Section 1 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of mercury from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of mercury is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide (CO2) from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide (CO2). The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of carbon dioxide (CO2) from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of carbon dioxide (CO2) is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"On or before 1 June of each year, the Department of Environment and Natural Resources and the Utilities Commission shall report on the implementation of this act to the Environmental Review Commission and the Joint Legislative Utility Review Committee. The first report required by this section shall be submitted no later than 1 June 2003."

Session Laws 2002-4, s. 15, contains a severability clause.

§ 143-215.108. Control of sources of air pollution; permits required.

(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained from the Commission a permit therefor and has complied with any conditions of this permit:

(1) Establish or operate any air contaminant source;

(2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;

(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b) (12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(b) The Commission shall act upon all applications for permits so as to effectuate the purposes of this Article by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

(1) To grant and renew a permit with any conditions attached that the Commission believes necessary to achieve the purposes of this Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;

(2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;

(3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;

(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and

b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (1 April 1990 Edition);

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts that will prevent attainment or maintenance by any other state of any national ambient air quality standard or that will interfere with measures required to be included in the

applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility; and

(8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.

(d)(1) The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed.

(2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.

(3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in subdivision (3) of this subsection as a result of a petition filed pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance of the permit by the Commission, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(d1) No permit issued pursuant to this section shall be issued or renewed for a term exceeding five years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the emission of air contaminants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.

(h) Expedited Review of Applications Certified by a Professional Engineer. — The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the

information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:
   a. Publish any required notices, using the draft permit included with the application;
   b. Schedule any required public meetings or hearings on the application and permit; and
   c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.
   a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.
   b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.

(3) Time for Permit Decision. For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.

(4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may:
   a. Take no action, thereby consenting to the continued review of the application; or
   b. Treat the failure to issue a permit decision as a denial of the application and appeal the denial as provided in subdivision (2) of subsection (d) of this section.

(5) Power to Halt Review. At any time after the permit application certified by a professional engineer has been determined to be

complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:

a. The permit application is not in substantial compliance with the applicable rules; or

b. The applicant failed to pay all permit application fees.

(6) Rights if Review Halted. If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:

a. Revise and resubmit the application; or

b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.

(7) Option; No Additional Fee. The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

(i) Rules for Review of Applications Other Than Those Certified by a Professional Engineer. — The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:

(1) Determining that the permit application is complete;

(2) Requesting additional information to determine completeness;

(3) Determining that additional information is needed to conduct a technical review of the application;

(4) Completing all technical review of the permit application;

(5) Holding and completing all public meetings and hearings required for the application;

(6) Completing the record from reviewing and acting on the application; and

(7) Taking final action on the permit, including granting or denying the application. (1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3; 1987, c. 461, s. 2; c. 827, ss. 154, 206; 1989, c. 168, s. 30; c. 492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. 1; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2; 1995 (Reg. Sess., 1996), c. 728, s. 1; 2002-4, s. 2.)

Editor's Note. —

Session Laws 2002-4, s. 15, contains a severability clause.

Effect of Amendments. — Session Laws 2002-4, s. 2, effective June 20, 2002, rewrote subsection (a); in subsection (b), substituted "purposes of this Article" for "purpose of this section"; and in subdivision (c)(1), substituted "any conditions attached that" for "such conditions attached as" and substituted "Article" for "section."

CASE NOTES

Cited in Tri-County Paving, Inc. v. Ashe County, 281 F.3d 430, 2002 U.S. App. LEXIS 2747 (4th Cir. 2002).

OPINIONS OF ATTORNEY GENERAL

When Air Quality Permit Must Be Obtained. — Subdivision (a)(2) requires that a person secure an air quality permit prior to the actual on-site assembling of materials that will constitute an air contaminant source. See opinion of Attorney General to Alan W. Klimek, Director, North Carolina Division of Air Quality, 2001 N.C. AG LEXIS 7 (2/8/2001).

§ 143-215.111. General powers of Commission; auxiliary powers.

CASE NOTES

Cited in Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

§ 143-215.112. Local air pollution control programs.

CASE NOTES

Cited in Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

§ 143-215.114A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

(3) 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. 143-215.110.

(4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter.

(5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of Article 21.

(6) Violates the offenses set out in G.S. 143-215.114B.

(7) Violates the emissions limitations set out in G.S. 143-215.107D.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues.

(b1) The Secretary may assess a civil penalty of not more than ten thousand dollars ($10,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any calendar year, an investor-owned public utility has violated an emissions limitation set out in G.S. 143-215.107D, the violation shall be considered to be continuous from the day that the collective emissions first exceeded the emissions limitation set out in G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a separate civil penalty for each day.

(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 of 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 within 30 days of receipt of the notice of assessment.

(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 and a stipulation of the facts on which the assessment 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 remission requests and his 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 has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court 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 has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) Repealed by Session Laws 1996, Second Extra Session c. 18, s. 27.34(f).

(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 8; c. 1045, s. 4; 1991, c. 552, s. 4; c. 725, s. 7; 1991 (Reg. Sess., 1992), c. 890, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 27.34(f); 1997-496, s. 7; 1998-215, s. 73; 2002-4, ss. 4, 5; 2002-165, s. 1.12.)

Editor's Note. — Session Laws 2002-4, s. 15, contains a severability clause.

Effect of Amendments. — Session Laws 2002-4, ss. 4, 5, as amended by Session Laws 2002-165, s. 1.12, effective June 20, 2002, added subdivision (a)(7); added subsection (b1); and made a stylistic change.

CASE NOTES

Cited in Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

§ 143-215.114B. Enforcement procedures: criminal penalties.

(a) For purposes of this section, the term "person" shall mean, in addition to the definition contained in G.S. 143-212, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the

courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(f) Any person who negligently violates any classification, standard or limitation established pursuant to 215.107; G.S. 143-215.107 or by G.S. 143-215.107D any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the Commission implementing any of the said section, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(g) Any person who knowingly and willfully violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108; or of a special order or other appropriate document issued pursuant to G.S. 143-215.110, shall be guilty of a Class H felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues. For the purposes of this subsection, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law, interpret the phrase in the light of reason and experience.

(h)(1) Any person who knowingly violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108; or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which a violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

a. His conduct, if he is aware of the nature of his conduct;

b. An existing circumstance, if he is aware or believes that the circumstance exists; or

c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

a. The person is responsible only for actual awareness or actual belief that he possessed; and

b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endan-

gered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(i) Any person who 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 Article or Article 21, or a rule implementing this Article or Article 21; or who knowingly makes a false statement of a material fact in a rulemaking or contested case under this Article or Article 21; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or Article 21 or rules of the Commission implementing this Article or Article 21, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000).

(j) Repealed by Session Laws 1993, c. 539, s. 1320. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1004, s. 49; c. 1045, s. 5; 1993, c. 539, ss. 1026, 1027, 1318, 1319, 1320; 1994, Ex. Sess., c. 24, s. 14(c); 2002-4, ss. 6-8.)

Editor's Note. — Session Laws 2002-4, s. 15, contains a severability clause.

Effect of Amendments. — Session Laws 2002-4, ss. 6-8, effective June 20, 2002, in subsection (f), added "or by G.S. 143-215.107D" following "G.S. 143-215.107"; in subsection (g), substituted "G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D" for "G.S. 143-215.107 or"; in subdivision (h)(1), substituted "G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D" for "G.S. 143-215.107 or"; and made minor stylistic changes.

Article 25.

National Park, Parkway and Forests Development Commission.

§ 143-258: Repealed by Session Laws 2002-165, s. 1.8, effective October 23, 2002.

Article 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.8. Procedures.

(a) Within the meaning of this section:

(1) "Local governing body" means, as the case may be, the board of commissioners of a county, the city council (or equivalent legislative body) of a city, or the board of aldermen or board of commissioners (or equivalent legislative body) of a town.

(2) "Local government" means a county, city or town.

(3) "Properties" include any properties or interest in properties acquired by purchase or gift.

(b) The Council of State may petition the General Assembly to enact a law pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting

any properties owned by the State of North Carolina (or proposed for gift to or purchase by the State) and designated in the petition for inclusion in the State Nature and Historic Preserve.

(c) The governing body of any local government, or any combination of two or more such bodies may petition the General Assembly to enact a law pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by the local government (or proposed for gift to or purchase by the local government) and designated in the petition for inclusion in the State Nature and Historic Preserve.

(d) The petition referred to in subsections (a) and (b) of this section shall identify the properties sought to be included in the Preserve. The General Assembly may then enact a law to accept the designated properties in the Preserve and enactment of the law by the General Assembly shall constitute the special dedication and acceptance of the designated properties in the State Nature and Historic Preserve contemplated by Article XIV, Sec. 5 of the North Carolina Constitution.

(e) In order to provide accessible information to the public concerning the State Nature and Historic Preserve, every law accepting properties in the Preserve shall be codified in the General Statutes. A certified copy of every law accepting properties in the Preserve shall be transmitted by the Secretary of State to the register of deeds in each county wherein these properties, or any part of them, are located, for filing and indexing in the grantor index.

(f) This Article shall constitute an exclusive procedure only for placing properties in the State Nature and Historic Preserve, and shall not preclude the dedication of properties by other means for purposes identical or similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution.

(g) It is the intent of this Article to complement any applicable provisions of federal and State law and regulations relating to dedication or acceptance of properties for purposes similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution. The Council of State is hereby authorized to adopt rules and regulations to implement the provisions of this Article, including rules and regulations consistent with this Article to comport with applicable federal and State law and regulations. A copy of this Article, and of any rules affecting properties owned by local governments shall be filed by the Council of State with the chairman of the local governing body of every county, city and town within 30 days after ratification. (1973, c. 443, s. 3; 1999-268, s. 6.)

Editor's Note. — Session Laws 1999-268, s. 6, amended this section, effective upon passage of the constitutional amendment set out in Session Laws 1999-268, s. 3. The constitutional amendment was approved by the voters at the general election on November 5, 2002, and the results were certified by the State Board of Elections on November 19, 2002.

§ 143-260.10. Components of State Nature and Historic Preserve.

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of April 3, 2001: Baldhead Island State Natural Area, Bay Tree Lake State Park, Bullhead Mountain State Natural Area, Carolina Beach State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Natural Area, Eno River State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Hammocks Beach State Park, Hemlock Bluffs State Natural

Area, Jones Lake State Park, Lake James State Park, Lake Norman State Park, Lake Waccamaw State Park, Lumber River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park, Run Hill State Natural Area, Singletary Lake State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of April 3, 2001, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of April 3, 2001, with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of April 3, 2001, with the exception of the following tract: The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of April 3, 2001.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of April 3, 2001, with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres; and the portion of that certain tract or parcel of land at Stone Mountain State Park in Alleghany

County, Cherry Lane Township, described in Deed Book 219, Page 543, and more particularly described as all of the land in this parcel lying north of the new division line on the survey by Andrews and Hobson Surveyors dated August 15, 2000, and entitled "Property Exchange Agreement for State of North Carolina & the United States of America", and filed in the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of April 3, 2001: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of April 3, 2001, with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(13) All lands and waters located within the boundaries of South Mountains State Park as of April 3, 2001, with the exception of the following tracts: The portion of that tract or property at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 862, Page 1471, required for the right-of-way and easements for the relocation of SR 1904 within the park and lying generally between the Rutherford Electric Membership Corporation right-of-way and the southern property boundary of the park, as described in the drawing entitled "Survey for State of North Carolina", dated January 28, 1999, prepared by Suttles Surveying, P.A., bearing the preparer's file name 12455.dwg and filed in the State Property Office; and the portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or, (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341,

and Deed Book 884, Page 1640. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(14) All lands and waters within the boundaries of Bushy Lake State Natural Area as of April 3, 2001, with the exception of the following tract: The portion of that certain tract or parcel of land at Bushy Lake State Natural Area in Cumberland County, Beaver Dam Township, described in Deed Book 3588, Page 583, and shown as the 0.58 acre parcel within tract 2 on the survey prepared by Lewis G. Paschal, Professional Land Surveyor, entitled "Recombination Survey for State of North Carolina" dated April 1989 and December 2000, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Bushy Lake State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of April 3, 2001, with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of April 3, 2001. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the

communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. (1979, c. 498; 1989, Joint Res. 23; c. 146, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 30; 1999-268, s. 2; 2001-217, s. 2; 2002-149, s. 1.)

Editor's Note. —

Session Laws 2002-89, ss. 1 and 2, effective August 22, 2002, authorize the Department of Environment and Natural Resources to add Elk Knob State Natural Area and Beech Creek Bog State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

Session Laws 2002-149, s. 2, effective October 9, 2002, provides: "Boone's Cave State Natural Area is deleted from the State Parks System pursuant to G.S. 113-44.14. The State may transfer this property to Davidson County for management as a park. The instrument transferring this property shall provide that the State retains a possibility of reverter and shall provide that, in the event that Davidson County ceases to manage the property as a park, the property shall revert to the State. The State may not otherwise sell or exchange the property."

Effect of Amendments. —

Session Laws 2002-149, s. 1, effective October 9, 2002, deleted "Boone's Cave State Natural Area" and "Mount Jefferson State Natural Area" from the list of natural areas in subdivision (1); and added subdivision (16).

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.

Cross References. — As to applicability of Article 31 of Chapter 143 to negligent acts committed by officers, etc., of the State acting pursuant to G.S. 130A-475 et seq., relating to terrorist incidents, see G.S. 130A-478.

Legal Periodicals. —

For note, "Taking One For the Team: Davidson v. University of North Carolina and the Duty of Care Owed by Universities to Their Student-Athletes," see 27 Wake Forest L. Rev. 589 (2002).

CASE NOTES

I. In General.

I. IN GENERAL.

Superior Court lacked jurisdiction over suit against state university by former students because the Tort Claims Act, G.S. 143-291 et seq., was not a waiver of sovereign immunity to the extent of insurance coverage; the language concerning insurance was more consistent with a designation of the source of payment than with a designation of the forum for adjudication. Wood v. N.C. State Univ., 147 N.C. App. 336, 556 S.E.2d 38, 2001 N.C. App. LEXIS 1175 (2001), cert. denied, 355 N.C. 292, 561 S.E.2d 887 (2002).

Such That Defendant Would Be Liable If It Were a Private Person. —

The trial court lacked jurisdiction to hear an employee's Tort Claims Act action against the Department of Transportation arising from the employee's injury while working as a seaman on a ferry boat; the employee argued that the

claim was in effect based on the federal Jones Act, 46 U.S.C.S. 688 (2001), and the State had not waived its sovereign immunity to the Jones act, because the Tort Claims Act specifically codified and automatically raised the defense of contributory negligence in each claim, while the Jones Act applied the standard of comparative negligence, and thus, an employer who would be liable to a partially negligent claimant under the Jones Act would not be liable to the same claimant in accordance with the laws of North Carolina, and because the Tort Claims Act expressly stated that the State could be liable only in circumstances where the State, if a private person, would be liable to the claimant in accordance with the laws of North Carolina, G.S. 143-291(a). Midgett v. N.C. DOT, — N.C. App. —, 568 S.E.2d 643, 2002 N.C. App. LEXIS 979 (2002).

State cannot be an absolute insurer of the safety of everyone committed to its custody.

North Carolina Department of Health and Human Services (DHHS) could not be held liable under the doctrine of respondeat superior for a foster father's conduct and the North Carolina Industrial Commission correctly ruled that it did not have jurisdiction to hear a claim which a guardian ad litem filed against DHHS in behalf of a foster child after the child was injured by the child's foster father. Creel v. N.C. Dep't of Health & Human Servs., — N.C. App. —, 566 S.E.2d 832, 2002 N.C. App. LEXIS 900 (2002).

Cited in Kawai Am. Corp. v. Univ. of N.C. at Chapel Hill, — N.C. App. —, 567 S.E.2d 215, 2002 N.C. App. LEXIS 887 (2002).

OPINIONS OF ATTORNEY GENERAL

North Carolina Emergency Response Commission. — State employees named to the North Carolina Emergency Response Commission are entitled to coverage under the Tort Claims Act, G.S. 143-291 et seq., as they would be for any other assigned duties. See Opinion of Attorney General to Eric Tolbert, Chairman, N.C. Emergency Response Commission, 2000 N.C. AG LEXIS 14 (9/6/2000).

Members of the North Carolina Emergency Response Commission who are not employed by the state, but appointed by the Governor to act on behalf of the state, become agents of the state and are entitled to coverage under the Tort Claims Act, G.S. 143-291 et seq. See Opinion of Attorney General to Eric Tolbert, Chairman, N.C. Emergency Response Commission, 2000 N.C. AG LEXIS 14 (9/6/2000).

§ 143-293. Appeals to Court of Appeals.

CASE NOTES

Cited in Midgett v. N.C. DOT, — N.C. App. —, 568 S.E.2d 643, 2002 N.C. App. LEXIS 979 (2002).

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.

CASE NOTES

Cited in Midgett v. N.C. DOT, — N.C. App. —, 568 S.E.2d 643, 2002 N.C. App. LEXIS 979 (2002).

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

CASE NOTES

Cited in Midgett v. N.C. DOT, — N.C. App. —, 568 S.E.2d 643, 2002 N.C. App. LEXIS 979 (2002).

§ 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 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). However, if the Director of the Budget determines that the agency liable for the claim has the resources to pay the full claim even though it exceeds one hundred fifty thousand dollars ($150,000), then the Director of the Budget may, in the Director's discretion, require the agency to pay the full claim. Additionally, the Director of the Budget may, in the Director's discretion, limit the number of agencies required to transfer funds to the agency liable for the claim to pay the balance of the claim. (2000-67, s. 7A(e); 2000-140, s. 93.1(i); 2001-424, s. 12.2(b); 2002-159, s. 43.)

Effect of Amendments. —
Session Laws 2002-159, s. 43, effective October 11, 2002, added the last two sentences.

Article 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

§ 143-300.2. Definitions.

Unless the context otherwise requires, the definitions contained in this section govern the construction of this Article.

(1) "Civil or criminal action or proceeding" includes any case, prosecution, special proceedings, or administrative proceeding in or before any court or agency of this State or any other state or the United States.

(2) "Employee" includes an officer, agent, or employee but does not include an independent contractor.

(3) "Employment" includes office, agency, or employment.

(4) "The State" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. Community colleges, technical colleges, and occupational licensing boards regulated by Chapter 93B of the General Statutes shall be deemed State agencies for purposes of this Article. (1967, c. 1092, s. 1; 1987, c. 684, s. 2; 2002-168, s. 2.)

Effect of Amendments. — Session Laws 2002-168, s. 2, effective October 1, 2002, inserted "and occupational licensing boards regulated by Chapter 93B of the General Statutes" and made minor stylistic changes in subdivision (4).

OPINIONS OF ATTORNEY GENERAL

"Employee." — The officers and directors of the Foundation of The University of North Carolina at Charlotte, Inc., the Athletic Foundation of The University of North Carolina at Charlotte, and the University of North Carolina at Charlotte Alumni Association are not covered by the Defense of State Employees Act, G.S. 143-300.2 et seq., as such officers, direc-

tors, and employees are not "employees" of the state as defined by the statute. See opinion of Attorney General to William M. Steimer, University Attorney, The University of North Carolina at Charlotte, 2000 N.C. AG LEXIS 21 (4/14/2000).

§ 143-300.8. Defense of local sanitarians.

Editor's Note. — Session Laws 2001-505, s. 3, as amended by Session Laws 2002-159, s. 60, provides: "The Public Officers and Employees Liability Insurance Commission in the Department of Insurance shall effect and place professional liability insurance coverage under G.S. 58-32-15 for local health department sanitarians defended by the State under G.S. 143-300.8. For insurance purposes only under G.S. 58-32-15, local health department sanitarians are considered to be employees of the Department of Environment and Natural Resources."

ARTICLE 31D.

State Employee Federal Remedy Restoration Act.

§ 143-300.35. State Employee Federal Remedy Restoration Act.

CASE NOTES

Applicability. — Employee's age discrimination claims under the Age Discrimination in Employment Act of 1967, 29 U.S.C.S. § 621 et seq., were barred by the doctrine of sovereign immunity where the employee's claim stemmed from events occurring before October 1, 2001, thereby making North Carolina's recent waiver of sovereign immunity, G.S. 143-300.35, inapplicable. Candillo v. N.C. Dep't of Corr., 199 F. Supp. 2d 342, 2002 U.S. Dist. LEXIS 13272 (M.D.N.C. 2002).

ARTICLE 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

Local Modification. — (As to Article 33C) Edgecombe: 1991, c. 404, ss. 3(h), 4(h) and 5(e); (as to Article 33C) Franklin: 1993, c. 341; (as to Article 33C) city of Charlotte: 2000-26, s. 1; city of Durham: 1983, c. 373; city of Fayetteville: 1989, c. 355, s. 1; (as to Article 33C) city of Franklinton: 1993, c. 341; (as to Article 33C) city of Greensboro: 1987, c. 51.

§ 143-318.10. All official meetings of public bodies open to the public.

OPINIONS OF ATTORNEY GENERAL

Definition of "Public Entity". — The term "public entity" includes all elected or appointed authorities of the state and their individual departments, commissions, committees, councils, including the constituent institutions of the University of North Carolina. See opinion of Attorney General to T. Brooks Skinner, Jr., General Counsel, North Carolina Department of Administration, 2002 N.C. AG LEXIS 13 (3/7/02).

CASE NOTES

Opening of Closed Session Minutes. — Under G.S. 143-318.10, minutes of all official meetings, including closed sessions, are public records within meaning of Public Records Law, G.S. 132-1 et seq. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Even though they are public records, minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session, under G.S. 143-318.10(e). Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Plain language of G.S. 143-138.10 requires that a closed session be conducted in compliance with G.S. 143-318.11 in order for the minutes of such session to be withheld from public inspection. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

§ 143-318.11. Closed sessions.

CASE NOTES

Legislative Intent of Subsection (a)(1). — Legislature intended, in G.S. 143-318.11(a)(1), to restrict the subject matter which may be considered by a public body in a closed session. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Attorney-Client Exception Held Applicable. — As zoning appeals board held closed hearings solely in order to consult with its attorney on matters within the scope of the attorney-client privilege, and the aggrieved property owner failed to show any prejudice from the board's meeting in closed session, its challenge to the closed meetings was denied. Carolina Holdings, Inc. v. Hous. Appeals Bd., 149 N.C. App. 579, 561 S.E.2d 541, 2002 N.C. App. LEXIS 281 (2002).

Matters Not Subject to Negotiation. — Under G.S. 143-318.11(a)(5), a city council erroneously refused to reveal in open session the location, proposed purpose, and owner of certain property it was considering acquiring for a public park, because none of those matters were subject to negotiation. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Language of G.S. 143-318.11(a)(5) does not permit a public body to deny the public access to information which is not a material term subject to negotiation regarding the acquisition of real property so a public body may not reserve for discussion in closed session, under the guise of G.S. 143-318.11(a)(5), matters relating to the terms of a contract for acquisition of real property unless those terms are material to the contract and also actually subject to negotiation. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Disclosure of Minutes. — Even though they are public records, minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session, under G.S. 143-318.10(e). Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Plain language of G.S. 143-138.10 requires that a closed session be conducted in compliance with G.S. 143-318.11 in order for the minutes of such session to be withheld from public inspection. Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

Cited in Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

§ 143-318.12. Public notice of official meetings.

Editor's Note. — Session Laws 2002-123, s. 10, effective September 26, 2002, provides: "Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes by giving at least 48 hours notice of its intent to adopt the resolution, as provided under G.S. 143-318.12(b)(2)."

§ 143-318.16A. Additional remedies for violations of Article.

CASE NOTES

Cited in Boney Publishers, Inc. v. Burlington City Council, — N.C. App. —, 566 S.E.2d 701, 2002 N.C. App. LEXIS 859 (2002).

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 December 31, 2006)** Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; 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).

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 commu-

G.S. 143-341(3) is set out twice. See notes.

nity 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-subdivisions b. and b1. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11.

(3) **(Effective December 31, 2006)** 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).

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. The Secretary shall develop a plan for the efficient operation of the center that meets the needs of State agencies and ensures timely delivery of mail, and shall present that plan to the Office of State Budget and Management and the General Assembly no later than the convening date of the 2003 General Assembly.
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 110,000 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 economically 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, "economically suitable transportation" means the most cost-effective standard vehicle in the State motor fleet, unless special towing provisions are required by the agency. The Department may not assign any employee or agency a motor vehicle that is not economically 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. The Department may provide law enforcement vehicles only to those agencies which have statutory pursuit authority.
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; 2001-424, s. 7.4; 2001-496, s. 8(d); 2002-126, s. 19.2.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 19.2, effective July 1, 2002, added the last sentence of subdivision (8)g.

Article 36A.

State Employee Incentive Bonus Program.

§ 143-345.22. Allocation of incentive bonus funds; nonmonetary recognition.

OPINIONS OF ATTORNEY GENERAL

Allocation of Savings That Result from Sources Funded Under Special Funds Statutes. — The allocation of savings that result from sources funded under the special funds statutes should be distributed in accordance with the specific statutory provisions creating the particular special fund; however, in those allocations where the special fund is silent as to proceeds of this type, this section is controlling and the savings must be distributed to the General Fund. See opinion of Attorney General to T. Brooks Skinner, Jr., General Counsel, N. C. Department of Administration, 2001 N.C. AG LEXIS 21 (6/5/2001).

Article 38.

Water Resources.

§ 143-354. Ordinary powers and duties of the Commission.

Editor's Note. — Session Laws 2002-167, s. 3(a) to (c), provides: "(a) Pursuant to subdivisions (1) and (8) of G.S. 143-354(a), the Environmental Management Commission shall develop and implement rules governing water conservation and water reuse during drought and water emergency situations. The rules shall establish minimum standards and practices for water conservation and water reuse for all of the following classes of water users:

"(1) Publicly owned and privately owned water supply systems.

"(2) State agencies.

"(3) Local governments.

"(4) Business and industrial users of water.

"(5) Agricultural and horticultural users of water.

"(b) In developing the rules authorized by subsection (a) of this section, the Environmental Management Commission shall consult

with representatives of water users and advocacy groups listed in subsection (a) of Section 5 of this act.

"(c) Rules adopted pursuant to subsection (a) of this section shall not supercede or modify existing rules governing water used in the generation of electricity. This section shall not be construed to authorize the Commission to adopt temporary rules. The Commission shall adopt permanent rules so that the rules will become effective following legislative review pursuant to G.S. 150B-21.3(b) by the 2005 Regular Session of the General Assembly." As to study to evaluate water conservation measures being implemented in the state, see the editor's note under G.S. 143-355.

§ 143-355. Powers and duties of the Department.

(a) Repealed by Session Laws 1989, c. 603, s. 1.

(b) Functions to Be Performed. — The Department shall:

(1) Request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) Initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) Prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) Make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) Cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) Cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) Cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) Provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) Discuss with federal, State, and municipal officials and other interested persons a program of development of rivers, harbors, and related resources.

(10) Make investigations and render reports requested by the Governor and the General Assembly.

(11) Participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State Governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.

(12) Prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) Formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) Include in the biennial budget the cost of performing the additional functions indicated above.

(15) Initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

(b1) The Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(c) Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. The provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department to represent the State in connection with such duties.

(e) Repealed by Session Laws 1998-129, s. 1, effective January 1, 2000.

(f) Samples of Cuttings to Be Furnished the Department When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. — Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drilling for Petroleum and Minerals Excepted. — The provisions of this Article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation. — Any person violating the provisions of subsections (e), (f) and (g) of G.S. 143-355 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall only be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. — The Department shall make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well-drilling law the Department may prepare analyses of well cuttings for mineral and petroleum content.

(k) Water Use Information. — Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. This subsection does not apply to withdrawals or uses by individuals or families for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department. Within the meaning of this subsection the term "person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, and private or public corporations organized or existing under the laws of this State or any other state or country.

(*l*) Each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. Plans shall include present and projected population, industrial development, water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, current and future water conservation and water reuse programs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government.

(m) In order to assure the availability of adequate supplies of good quality water to protect the public health and to support desirable economic growth, the Department shall develop a State water supply plan. The State water supply plan shall include the information and projections required to be included in local plans, a summary of water conservation and water reuse

programs described in local plans, a summary of the technical assistance needs indicated by local plans, and shall indicate the extent to which the various local plans are compatible. The State plan shall identify potential conflicts among the various local plans and ways in which local water supply programs could be better coordinated.

(n) The Department of Environment and Natural Resources shall report to the Environmental Review Commission on the implementation of this section and the development of the State water supply plan on or before 1 September of each year. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86; 1977, c. 771, s. 4; 1981, c. 514, ss. 2, 3; 1989, c. 603, s. 1; 1993, c. 513, s. 7(a); c. 539, s. 1034; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 509, s. 85; 1997-358, ss. 5, 6; 1998-129, s. 1; 1998-168, s. 5; 2001-452, s. 2.7; 2002-167, ss. 1, 2.)

Editor's Note. —

Session Laws 2002-167, s. 5(a), (b), provides: "(a) The Department of Environment and Natural Resources shall evaluate water conservation measures being implemented in the State and identify incentive programs and other voluntary programs that can help foster water conservation and water reuse. In conducting its study, the Department shall specifically evaluate water conservation measures being implemented or advocated by the following:

"(1) Publicly owned and privately owned water supply systems.

"(2) State agencies.

"(3) Local governments.

"(4) Business and industrial users of water.

"(5) Environmental protection and natural resource advocacy groups.

"(6) Electric utilities.

"(7) Agricultural and horticultural users of water.

"(8) Residential users of water.

"(b) The Department shall submit an interim report no later than 15 March 2003, and shall submit a final report no later than 15 February 2004, as to its findings and recommendations to the Environmental Review Commission and the Environmental Management Commission."

Effect of Amendments. —

Session Laws 2002-167, ss. 1 and 2, effective October 23, 2002, inserted "current and future water conservation and water reuse programs" in the fourth sentence of subsection (*l*) and inserted "a summary of water conservation and water reuse programs described in local plans" in the second sentence of subsection (m).

§ 143-358. Cooperation of State officials and agencies.

Editor's Note. — Session Laws 2002-167, s. 4, provides: "There is hereby established a goal to reduce water consumption by State agencies by at least 10 percent (10%). As used in this section, the term "State agencies" includes all agencies of the executive branch of the government of North Carolina, the General Assembly, the General Court of Justice, and The University of North Carolina. For State agencies that purchase water or that otherwise have reliable records of their water consumption for the 2001-2002 fiscal year, the goal shall apply to the consumption of water during the 2002-2003 fiscal year as compared to water consumed during the 2001-2002 fiscal year. State agencies that do not have reliable records of their water consumption during the 2001-2002 fiscal year shall (i) endeavor to reduce water consumption to the maximum extent possible during the 2002-2003 fiscal year, (ii) maintain records of their water consumption during the 2002-2003 fiscal year, and (iii) determine their progress toward achieving the goal on the basis of reductions in water consumed during the 2003-2004 fiscal year."

Article 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

CASE NOTES

Private Right of Action. —

Although the North Carolina Equal Employment Practices Act (NCEEPA), G.S. 143-422.1 et seq., had been applied to common law claims by North Carolina courts, the courts had not recognized the tort of wrongful constructive discharge, and thus, the employee's claim for wrongful discharge under the NCEEPA was dismissed. Helmstetler v. Borden Chem., Inc., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 13795 (M.D.N.C. June 13, 2002).

Former employee's racial discrimination claim under the North Carolina Equal Employment Practices Act was dismissed by the United States District Court for the Western District of North Carolina, Asheville Division, because the Act did not provide for a private right of action. Hazel v. Med. Action Indus., Inc., 216 F. Supp. 2d 541, 2002 U.S. Dist. LEXIS 16072 (W.D.N.C. 2002).

Cited in Wells v. N.C. Dep't of Corr., — N.C. App. —, 567 S.E.2d 803, 2002 N.C. App. LEXIS 929 (2002).

§ 143-422.2. Legislative declaration.

CASE NOTES

No Cause of Action for Wrongful Discharge. —

Given that North Carolina courts have not recognized a private cause of action under the North Carolina Equal Employment Practices Act (NCEEPA), G.S. 143-422.1 et seq., the federal court dismissed the employee's wrongful discharge claim under the NCEEPA. McNeil v. Scotland County, 213 F. Supp. 2d 559, 2002 U.S. Dist. LEXIS 17873 (M.D.N.C. 2002).

Cited in Julsaint v. Corning, Inc., 178 F. Supp. 2d 610, 2001 U.S. Dist. LEXIS 23843 (M.D.N.C. 2001); Jane v. Bowman Gray Sch. of Medicine-North Carolina Baptist Hosp., 211 F. Supp. 2d 678, 2002 U.S. Dist. LEXIS 13362 (M.D.N.C. 2002); Helmstetler v. Borden Chem., Inc., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 13795 (M.D.N.C. June 13, 2002).

Article 56.

Emergency Medical Services Act of 1973.

§ 143-508. Department of Health and Human Services to establish program; rules and regulations of North Carolina Medical Care Commission.

(a) The State Department of Health and Human Services shall establish and maintain a program for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program.

(b) The North Carolina Medical Care Commission shall adopt, amend, and rescind rules to carry out the purpose of this Article and Articles 7 and 7A of Chapter 131E of the General Statutes regardless of other provisions of rule or law. These rules shall be adopted with the advice of the Emergency Medical Services Advisory Council. The Department of Health and Human Services shall enforce all rules adopted by the Commission. Nothing in this Chapter

shall be construed to authorize the North Carolina Medical Care Commission to establish or modify the scope of practice of emergency medical personnel.

(c) The North Carolina Medical Care Commission may adopt rules with regard to emergency medical services, not inconsistent with the laws of this State, that may be required by the federal government for grants-in-aid for emergency medical services and licensure which may be made available to 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.

(d) The North Carolina Medical Care Commission shall adopt rules to do all of the following:

(1) Establish standards and criteria for the credentialing of emergency medical services agencies to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.

(2) Establish standards and criteria for the credentialing of trauma centers to carry out the purpose of Article 7A of Chapter 131E of the General Statutes.

(3) Establish standards and criteria for the education and credentialing of emergency medical services personnel to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.

(4) Establish standards and criteria for the credentialing of EMS educational institutions to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.

(5) Establish standards and criteria for data collection as part of the statewide emergency medical services information system to carry out the purpose of G.S. 143-509(5).

(6) Implement the scope of practice of credentialed emergency medical services personnel as determined by the North Carolina Medical Board.

(7) Define the practice settings of credentialed emergency medical services personnel.

(8) Establish standards for vehicles and equipment used within the emergency medical services system.

(9) Establish standards for a statewide EMS communications system.

(10) Establish standards and criteria for the denial, suspension, or revocation of emergency medical services credentials for emergency medical services agencies, educational institutions, and personnel including the establishment of fines for credentialing violations.

(11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to agents that might cause anaphylaxis.

(12) Establish standards for the voluntary submission of hospital emergency medical care data. (1973, c. 208, s. 2; c. 1224, s. 2; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2002-179, s. 13.)

Effect of Amendments. — Session Laws 2002-179, s. 13, effective October 1, 2002, substituted "agents that might cause anaphylaxis" for "insect stings" in subdivision (d)(11).

§ 143-518. Confidentiality of patient information.

(a) Medical records compiled and maintained by the Department or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based

data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified.

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties, and those engaged in the trial of the case.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made pursuant to any other law.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released. (2001-220, s. 1; 2002-179, s. 11.)

Effect of Amendments. — Session Laws 2002-179, s. 11, effective October 1, 2002, added subdivision (a)(8).

Article 67.

First Flight Centennial Commission.

§ 143-640. Commission established; purpose; members; terms of office; quorum; compensation; termination.

(a) Establishment. — There is established the First Flight Centennial Commission. The Commission shall be located within the Department of Cultural Resources for organizational, budgetary, and administrative purposes.

(b) Purpose. — The purpose of the Commission is to develop and plan activities to commemorate the centennial of the first successful manned, controlled, heavier-than-air, powered flight (in this Article referred to as "the First Flight") and other historical events related to the development of powered flight.

(c) Membership. — The Commission shall consist of 29 members, as follows:

(1) Four persons appointed by the Governor.

(2) Five persons appointed by the President Pro Tempore of the Senate.

(3) Five persons appointed by the Speaker of the House of Representatives.

(4) The following persons or their designees, ex officio:

a. The Governor.

b. The President Pro Tempore of the Senate.

c. The Speaker of the House of Representatives.

d. The United States Senators from this State.

e. The member of the United States House of Representatives for the Third Congressional District.

f. The Governor of the State of Ohio.

g. The Secretary of the Department of Cultural Resources.

h. The Superintendent of the Cape Hatteras National Seashore of the United States National Park Service.

i. The chair of the Centennial of Flight Commemoration Commission.

j. The President of the First Flight Society.

k. The chair of the Dare County Board of Commissioners.

l. The Mayor of the Town of Kill Devil Hills.

m. The chair of the Dare County Tourism Board.

n. The Mayor of the Town of Kitty Hawk.

The members appointed to the First Flight Centennial Commission shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Commission, including individuals who have demonstrated expertise in the fields of aeronautics, aerospace science, or history, who have contributed to the development of the fields of aeronautics or aerospace science, or who have demonstrated a commitment to serving the public.

(d) Terms. — 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 two members for a term of two years and two members for a term of three years.

(2) The President Pro Tempore of the Senate shall initially appoint two members for a term of two years and two members for a term of three years.

(3) The Speaker of the House of Representatives shall initially appoint two members for a term of two years and two members for a term of three years.

Initial terms shall commence on July 1, 1994.

(e) Cochairs. — The Governor shall select the cochairs biennially from among the membership of the Commission. The initial term shall commence on July 1, 2001.

(f) Vacancies. — A vacancy in the Commission or as chair of 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.

(g) Compensation. — 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. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. — Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. — The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. — 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.

(k) Termination of Commission. — The Commission shall terminate June 30, 2004, which is six months after the 100th anniversary of the First Flight. (1993 (Reg. Sess., 1994), c. 777, s. 7(a); 1999-431, s. 3.2(a); 2001-486, ss. 2.12(a), 2.12(b); 2002-159, s. 20.)

Effect of Amendments. — Session Laws 2002-159, s. 20, effective October 11, 2002, substituted "29 members" for "28 members" in the introductory language of subsection (c).

Article 77.

Managed Care Patient Assistance Program.

§ 143-730. Managed Care Patient Assistance Program.

(a) The Office of Managed Care Patient Assistance Program is established in an existing State agency or department designated by the Governor. The Director of the Office of Managed Care Patient Assistance Program shall be appointed by the Governor.

(b) The Managed Care Patient Assistance Program shall provide information and assistance to individuals enrolled in managed care plans. The Managed Care Patient Assistance Program shall have expertise and experience in both health care and advocacy and will assume the specific duties and responsibilities set forth in subsection (c) of this section.

(c) The duties and responsibilities of the Managed Care Patient Assistance Program are as follows:

(1) Develop and distribute educational and informational materials for consumers, explaining their rights and responsibilities as managed care plan enrollees.

(2) Answer inquiries posed by consumers and refer inquiries of a regulatory nature to staff within the Department of Insurance.

(3) Advise managed care plan enrollees about the utilization review process.

(4) Assist enrollees with the grievance, appeal, and external review procedures established by Article 50 of Chapter 58 of the General Statutes.
(5) Publicize the Office of the Managed Care Patient Assistance Program.
(6) Compile data on the activities of the Office and evaluate such data to make recommendations as to the needed activities of the Office.

(d) The Director of the Managed Care Patient Assistance Program shall annually report the activities of the Managed Care Patient Assistance Program, including the types of appeals, grievances, and complaints received and the outcome of these cases. The report shall be submitted to the General Assembly, upon its convening or reconvening, and shall make recommendations as to efforts that could be implemented to assist managed care consumers.

(e) All health information in the possession of the Managed Care Patient Assistance Program is confidential and is not a public record pursuant to G.S. 132-1 or any other applicable statute.

For purposes of this section, "health information" means any of the following:
(1) Information relating to the past, present, or future physical or mental health or condition of an individual.
(2) Information relating to the provision of health care to an individual.
(3) Information relating to the past, present, or future payment for the provision of health care to an individual.
(4) Information, in any form, that identifies or may be used to identify an individual, that is created by, provided by, or received from any of the following:
a. An individual or an individual's spouse, parent, legal guardian, or designated representative.
b. A health care provider, health plan, employer, health care clearinghouse, or an entity doing business with these entities. (2001-446, s. 1.6; 2002-159, s. 45.)

Effect of Amendments. — Session Laws 2002-159, s. 45, effective October 11, 2002, added subsection (e).

Chapter 143A.

State Government Reorganization.

Article 5.

Department of Public Instruction.

Article 1.

General Provisions.

§ 143A-6. Types of transfers.

OPINIONS OF ATTORNEY GENERAL

Operation and management of the North Carolina State Fair. — The Department of Agriculture and Consumer Services, rather than the Board of Agriculture, has the authority to select the midway operator, execute contracts and operate and manage the North Carolina State Fair. See opinion of Attorney General to The Honorable Eric Miller Reeves, The North Carolina General Assembly, and The Honorable Alice Graham Underhill, The North Carolina General Assembly, 2002 N.C. AG LEXIS 6 (1/24/02).

Article 5.

Department of Public Instruction.

§ 143A-48.1. North Carolina Council on the Holocaust; creation; purpose; membership; expenses; assitance.

(a) There is hereby created the North Carolina Council on the Holocaust. The purpose of the Council is to prevent future atrocities similar to the systematic program of genocide of six million Jews and others by the Nazis. This purpose shall be accomplished by developing a program of education and observance of the Holocaust.

(b) The Council shall consist of 24 members, six appointed by the Governor, six appointed by the President Pro Tempore of the Senate, six appointed by the Speaker of the House of Representatives, and six appointed by the other 18 members. Members shall be appointed for two-year terms to begin July 1 of each odd-numbered year. The six at-large appointments shall be made by the Council at its first meeting after July 1 of each odd-numbered year. To be eligible for appointment as an at-large member, a person must either be a survivor of the Holocaust or a first-generation lineal descendant of such person. A majority of the members shall constitute a quorum for the transaction of business.

(c) The members of the Council shall be compensated and reimbursed for their expenses in accordance with G.S. 138-5.

(d) The Superintendent of Public Instruction may arrange for clerical or other assistance required by the Council. (1985, c. 757, s. 81(a); 1989, c. 47; 1995, c. 490, s. 23; 2002-126, s. 10.10D(a), (b).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 10.10D(d), provides: "The North Carolina Council on the Holocaust, as created by Part 28 of Article 3 of Chapter 143B of the General Statutes, and recodified as G.S. 143A-48.1 by this section, is transferred to the Department of Public Instruction by a Type II transfer, as defined in G.S. 143A-6."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 10.10D(a) and (b), effective October 1, 2002, recodified former G.S. 143B-216.20, 143B-216.21, 143B-216.22, and 143B-216.23 as this section; and rewrote the section.

Article 7.

Department of Agriculture and Consumer Services.

§ 143A-59. Board of Agriculture; transfer.

OPINIONS OF ATTORNEY GENERAL

Operation and management of the North Carolina State Fair. — The Department of Agriculture and Consumer Services, rather than the Board of Agriculture, has the authority to select the midway operator, execute contracts and operate and manage the North Carolina State Fair. See opinion of Attorney General to The Honorable Eric Miller Reeves, The North Carolina General Assembly, and The Honorable Alice Graham Underhill, The North Carolina General Assembly, 2002 N.C. AG LEXIS 6 (1/24/02).

Chapter 143B.

Executive Organization Act of 1973

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, as amended by Session Laws 2002-180, ss. 3.1 to 3.3, 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 four-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, 2004.

"(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 four-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, 2004. 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 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers and duties.

There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

(1) The Historical Commission shall have the following powers and duties:

a. To advise the Secretary of Cultural Resources on the scholarly editing, writing, and publication of historical materials to be issued under the name of the Department.

b. To evaluate and approve proposed nominations of historic, archaeological, architectural, or cultural properties for entry on the National Register of Historic Places.

c. To evaluate and approve the State plan for historic preservation as provided for in Chapter 121.

d. To evaluate and approve historic, archaeological, architectural, or cultural properties proposed to be acquired and administered by the State.

e. To evaluate and prepare a report on its findings and recommendations concerning any property not owned by the State for which State aid or appropriations are requested from the Department of Cultural Resources, and to submit its findings and recommendations in accordance with Chapter 121.

f. To serve as an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, particularly by evaluating and making recommendations concerning any State undertaking which may affect a property that has been entered on the National Register of Historic Places as provided for in Chapter 121 of the General Statutes of North Carolina.

g. To exercise any other powers granted to the Commission by provisions of Chapter 121 of the General Statutes of North Carolina.

h. To give its professional advice and assistance to the Secretary of Cultural Resources on any matter which the Secretary may refer to it in the performance of the Department's duties and respon-

sibilities provided for in Chapter 121 of the General Statutes of North Carolina.

i. To serve as a search committee to seek out, interview, and recommend to the Secretary of Cultural Resources one or more experienced and professionally trained historian(s) for either the position of Deputy Secretary of Archives and History when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the Deputy Secretary.

j. To assist and advise the Secretary of Cultural Resources and the Deputy Secretary of Archives and History in the development and implementation of plans and priorities for the State's historical programs.

(2) The Historical Commission shall have the power and duty to establish standards and provide rules and regulations as follows:

a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina Office of Archives and History.

b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina.

c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina.

d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina.

e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State.

f. For the extension of State aid or appropriations through the Department of Cultural Resources to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration.

f1. For the extension of State aid or appropriations through the Department of Cultural Resources to nonstate-owned nonprofit history museums.

g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this section. All current rules and regulations heretofore adopted by the Executive Board of the State Department of Archives and History, the Historic Sites Advisory Committee, the North Carolina Advisory Council on Historical Preservation, the Executive Mansion Fine Arts Commission, and the Memorials Commission shall remain in full force and effect unless and until repealed or superseded by action of the Historical Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 44; 1977, c. 513, s. 2; 1979, c. 861, s. 6; 1985 (Reg. Sess., 1986), c. 1014, s. 171(f); 1997-411, ss. 1-3; 2002-159, s. 35(k).)

Effect of Amendments. — Session Laws 2002-159, s. 35(k), effective October 11, 2002, substituted "Deputy Secretary of Archives and History" for "Director of the Division of Archives and History or the position of the Director of the North Carolina Museum of History Division" and "Deputy Secretary" for "Directors and the Divisions" in subdivision (1)i; substituted "Deputy Secretary of Archives and History" for "Director of the Division of Archives and History, and the Director of the North Carolina Museum of History Division" in subdivision

(1)j; substituted "Office of Archives and History" for "North Carolina Division of Archives and History or the North Carolina Museum of History Division" in subdivision (2)a; and made minor stylistic changes throughout the section.

Part 25. Historical Military Reenactment Groups.

§ 143B-127. Contracts with registered groups.

The Department of Cultural Resources, Office of Archives and History shall sign contracts for the performance of military historical dramas on State-owned property only with historical military reenactment groups properly registered pursuant to this Part. (1981, c. 523, s. 2; 2002-159, s. 35(j).)

Effect of Amendments. — Session Laws 2002-159, s. 35(j), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History."

Part 28. Andrew Jackson Historic Memorial Committee.

§ 143B-132. Andrew Jackson Historic Memorial Committee.

(a) The State of North Carolina and its citizens have long noted and recognized the origins and early life of Andrew Jackson, the nation's seventh president, in the Waxhaw region along the North Carolina-South Carolina border. It is important that this State recognize the origins and early life of this outstanding national leader in Western North Carolina. It is necessary to plan an appropriate memorial in Union County, North Carolina, to commemorate and display for all Americans the origins and early life of Andrew Jackson.

(b) There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President Pro Tempore of the Senate. Members shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term.

(c) The primary duties and responsibilities of the Committee are:

(1) To assist the Office of Archives and History, Department of Cultural Resources in determining the need for a permanent memorial to honor Andrew Jackson and to commemorate and display the origins and early life of Jackson in the Waxhaw region.

(2) To assist the Office of Archives and History, Department of Cultural Resources in determining the location, design, content, and form of a memorial, if the Committee determines that one is needed, at one of the sites associated with the early life of Andrew Jackson.

(3) To assist the Office of Archives and History, Department of Cultural Resources in determining the most appropriate methods for proceeding with the establishment and operation of the memorial, including methods for obtaining the necessary financial resources for property acquisition, capital expenditures, and operational expenses.

(4) To select appropriate qualified researchers and research institutions to assist the Committee in undertaking any required studies to complete the Committee's duties and responsibilities.

(d) Members of this Committee may not receive per diem, travel reimbursement, or subsistence allowances.

(e) Administrative and staff services for the Committee shall be provided by the Office of Archives and History, Department of Cultural Resources, which shall also provide the Committee with information in its possession relating to

past research concerning the origins and early life of Andrew Jackson. In addition, the Office of Archives and History, Department of Cultural Resources shall assist the Committee in preparing a report for submission to the General Assembly.

(f) Funds for the operation of the Committee shall be provided by the Department of Cultural Resources. (1985, c. 757, s. 180; 1995, c. 490, s. 7; 2002-159, s. 35(*l*).)

Effect of Amendments. — Session Laws 2002-159, s. 35(*l*), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History" throughout the section; and made minor stylistic changes.

Article 3.

Department of Health and Human Services.

Part 1. General Provisions.

§ 143B-136.1. Department of Health and Human Services — creation.

Prescription Drug System. — Session Laws 2001-424, ss. 21.6(a) to (d), as amended by Session Laws 2001-513, s. 20, and by Session Laws 2002-126, s. 10.6, provides: "(a) Of the funds appropriated in this act [Session Laws 2001-424] to the Department of Health and Human Services, the sum of two hundred thousand dollars ($200,000) for the 2001-2002 fiscal year shall be used to initiate the development of a system to assist eligible individuals in obtaining prescription drugs at no cost through pharmaceutical company programs. The system will be designed to minimize the efforts of patients and their health care providers in securing needed drugs. The required patient and health care provider data will be maintained and orders tracked in order to initiate timely reorders of needed drugs to assure continuity of medication intake. The Department may contract with a private nonprofit organization to assist in the development of the system as provided under this section.

"(b) The development of the system shall be jointly managed by the Office of Research, Demonstrations and Rural Health Development and the Office of Pharmacy Services, Division of Public Health.

"(c) The Department shall work with pharmaceutical companies in obtaining access to company applications for assistance and making those applications available to the general public. The Department shall ensure that pharmaceutical company programs are registered with the Department and shall obtain the application forms of each pharmaceutical program.

"(d) The Department shall report on the implementation of this section [s. 21.6 of Session Laws 2001-424] on January 1, 2002, April 1, 2002, and October 1, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division."

Information Technology Project. — Session Laws 2001-424, ss. 21.17(a) and (b), as amended by Session Laws 2002-126, s. 10.1, provide: "(a) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may establish special time-limited positions for implementation of federal requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Positions established are not permanent positions, not subject to the State Personnel Act under G.S. 126-1.1, and not subject to the State salary schedule.

"(b) Positions established pursuant to this section [s. 21.17 of Session Laws 2001-424] may commence no earlier than July 1, 2001, and shall expire June 30, 2005."

Acute Care and Long-Term Care Expenditures. — Session Laws 2001-424, s. 21.19(q), as amended by Session Laws 2002-126, s. 10.11(a), provides: "The Department of Health and Human Services shall submit a quarterly status report on expenditures for acute care and long-term care services to the Fiscal Research Division and to the Office of State Budget and Management. This report shall include an analysis of budgeted versus actual expenditures for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the

current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. The quarterly expenditure report and the revised forecast shall be forwarded to the Fiscal Research Division and to the Office of State Budget and Management no later than the third Thursday of the month following the end of each quarter."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143B-137.1. Department of Health and Human Services — duties.

Ruth M. Easterling Trust Fund for Children with Special Needs. — Session Laws 2002-126, s. 6.13, provides: "Whereas, Representative Ruth M. Easterling has served as an advocate for the children of the state for over 25 years as a member of the General Assembly,there is established the "Ruth M. Easterling Trust Fund for children With Special Needs". The purpose of the Trust Fund isto fund services for children with special needs that are not currently provided with State funds. The Trust Fund shall be used to:

"(1) Provide respite services for adoptive children, for children in foster care, and for other children with special needs at risk of out-of-home placement.

"(2) Pay for special services to, and special equipment for, children with special needs when there is no other source for payment, including, but not limited to, surgical repair of congenital anomalies and the purchase of mobility equipment.

"(3) Provide training to parents and caregivers in the unique care needs of children with special needs.

"The Secretary of Health and Human Services shall adopt rules to implement this section. By March 1, 2003, the Secretary shall report to the Chairs of the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services on the use of the Trust Fund."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143B-138.1. Department of Health and Human Services — functions and organization.

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Facility Services.
(7) Division of Vocational Rehabilitation.
(8) Repealed by Session Laws 1998-202, s. 4(v), effective January 1, 1999.

(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.
(2) Governor's Advisory Council on Aging.
(3) Commission for the Blind.
(4) Professional Advisory Committee.
(5) Consumer and Advocacy Advisory Committee for the Blind.
(6) Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.
(7) Social Services Commission.
(8) Child Day Care Commission.
(9) Medical Care Commission.
(10) Emergency Medical Services Advisory Council.
(11) Board of Directors of the Governor Morehead School.
(12) Board of Directors for the North Carolina Schools for the Deaf.
(13) North Carolina Council for the Hearing Impaired.
(14) Repealed by Session Laws 2002, ch. 126, s. 10.10D(c), effective October 1, 2002.
(15) Council on Developmental Disabilities.

(c) The functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Environment, Health, and Natural Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Dental Health.
(2) State Center for Health Statistics.
(3) Division of Epidemiology.
(4) Division of Health Promotion.
(5) Division of Maternal and Child Health.
(6) Office of Minority Health.
(7) Office of Public Health Nursing.
(8) Division of Laboratory Services.
(9) Office of Local Health Services.
(10) Division of Postmortem Medicolegal Examinations.
(11) Office of Women's Health.

(d) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Environment, Health, and Natural Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Commission for Health Services.
(2) Council on Sickle Cell Syndrome.
(3) Governor's Council on Physical Fitness and Health.
(4) Commission of Anatomy.
(5) Minority Health Advisory Council.
(6) Advisory Committee on Cancer Coordination and Control.

(e) The Department of Health and Human Services is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State. (1997-443, s. 11A.3; 1998-202, s. 4(v); 2002-126, s. 10.10D(c).)

Editor's Note. —

Session Laws 2002-126, s. 10.10D(d), provides: "The North Carolina Council on the Holocaust, as created by Part 28 of Article 3 of Chapter 143B of the General Statutes, and recodified as G.S. 143A-48.1 by this section, is transferred to the Department of Public Instruction by a Type II transfer, as defined in G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 10.10D(c), effective October 1, 2002, repealed subdivision (b)(14), which read: "North Carolina Council on the Holocaust."

§ 143B-139.1. Secretary of Health and Human Services to adopt rules applicable to local health and human services agencies.

The Secretary of the Department of Health and Human Services may adopt rules applicable to local health and human services agencies for the purpose of program evaluation, fiscal audits, and collection of third-party payments. The Secretary may adopt and enforce rules governing:

(1) The placement of individuals in licensable facilities located outside the individual's community and ability of the providers to return the individual to the individual's community as soon as possible without detriment to the individual or the community.

(2) The monitoring of mental health, developmental disability, and substance abuse services.

(3) The communication procedures between the area authority or county program, the local department of social services, the local education authority, and the criminal justice agency, if involved with the individual, regarding the placement of the individual outside the individual's community and the transfer of the individual's records in accordance with law.

(4) The enrollment and revocation of enrollment of Medicaid providers who have been previously sanctioned by the Department and want to provide services under this Article. (1975, c. 875, s. 45; 1997-443, s. 11A.101; 2002-164, s. 4.5.)

Effect of Amendments. — Session Laws 2002-164, s. 4.5, effective October 23, 2002, added "The secretary may adopt and enforce rules governing" to the end of the introductory paragraph, and added subdivisions (1) through (4).

Part 4. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 143B-148. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — members; selection; quorum; compensation.

(a) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services shall consist of 30 members, as follows:

(1) Six shall be appointed by the General Assembly, three upon the recommendation of the Speaker of the House of Representatives, and three upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. In recommending appointments under this section, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall give consideration to ensuring a balance of appointments that represent those who may have knowledge and expertise in adult issues and those who may have knowledge and expertise in children's issues. Of the three appointments recommended by the President Pro Tempore of the Senate, one shall be a physician licensed to practice medicine in North Carolina, with preference given to a psychiatrist, and two shall be members of the public. Of the three appointments recommended by the Speaker of the House of Representatives, one shall be a physician licensed to practice medicine in North Carolina who has expertise and experience in the field of developmental disabilities, or a professional holding a Ph.D. with experience in the field of developmental disabilities, and two shall be members of the public. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(2) Twenty-four shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and the remainder at-large members.

The Governor's appointees shall represent the following categories of appointment:

a. Three professionals licensed or certified under Chapter 90 or Chapter 90B of the General Statutes who are practicing, teaching, or conducting research in the field of mental health.

b. Four consumers or immediate family members of consumers of mental health services. Of these four, at least one shall be a consumer and at least one shall be an immediate family member of a consumer. No more than two of the consumers or immediate family members shall be selected from nominations submitted by the Coalition 2001 or its successor organization.

c. Two professionals licensed or certified under Chapter 90 or Chapter 90B of the General Statutes who are practicing, teaching, or conducting research in the field of developmental disabilities, and one individual who is a "qualified professional" as that term is defined in G.S. 122C-3(31) who has experience in the field of developmental disabilities.

d. Four consumers or immediate family members of consumers of developmental disabilities services. Of these four, at least one shall be a consumer and at least one shall be an immediate family member of a consumer. No more than two of the consumers or immediate family members shall be selected from nominations submitted by the Coalition 2001 or its successor organization.

e. Two professionals licensed or certified under Chapter 90 of the General Statutes who are practicing, teaching, or conducting research in the field of substance abuse, and one professional who is a certified prevention specialist or who specializes in the area of addiction education.

f. An individual knowledgeable and experienced in the field of controlled substances regulation and enforcement. The controlled substances appointee shall be selected from recommendations made by the Attorney General of North Carolina.

g. A physician licensed to practice medicine in North Carolina who has expertise and experience in the field of substance abuse with

preference given to a physician that is certified by the American Society of Addiction Medicine (ASAM)

h. Four consumers or immediate family members of consumers of substance abuse services. Of these four, at least one shall be a consumer and at least one shall be an immediate family member of a consumer. No more than two of the consumers or immediate family members shall be selected from nominations submitted by the Coalition 2001 or its successor organization.

i. A licensed attorney. The appointments of professionals licensed or certified under Chapter 90 or Chapter 90B of the General Statutes made in accordance with this subdivision, and physicians appointed in accordance with subdivision (1) of this subsection shall be selected from nominations submitted to the appointing authority by the respective professional associations.

(2a) The terms of all Commission members appointed or reappointed on or after July 1, 2002, shall be three years. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves. A member appointed on and after July 1, 2002, shall not serve more than two consecutive terms.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members shall apply to all members of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) Commission members shall receive per diem, travel and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Health and Human Services. To ensure effective and efficient coordination of rules and policies adopted by the Commission and the Secretary, the Secretary shall assign an individual who is knowledgeable about and experienced in the rule-making processes of the Commission and the Secretary and in the fields of mental health, developmental disabilities, and substance abuse to assist the Commission in carrying out its duties and responsibilities. (1973, c. 476, s. 130; 1977, c. 679, s. 2; 1981, c. 51, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 55.1 through 57; 1989, c. 625, s. 23; 1991 (Reg. Sess., 1992), c. 1038, s. 17; 1995, c. 490, s. 34; 1997-443, s. 11A.118(a); 2001-437, s. 1.21(b); 2001-486, s. 2.13; 2001-487, s. 90.5; 2002-61, s. 1.)

Editor's Note. —

Session Laws 2002-61, s. 2, provides, in part: "Compliance with the categories of appointment to the Commission under G.S. 143B-148(a), as amended by this act, shall be phased-in as follows. Upon expiration of the term of an initial appointment or reappointment made prior to July 1, 2002, the original appointing authority shall appoint an individual who most closely represents the appointment category delegated to that appointing authority under G.S. 143B-148(a), as amended by this act."

Effect of Amendments. —

Session Laws 2002-61, s. 1, effective August 1, 2002, rewrote subsection (a); and added the last sentence in subsection (e). See editor's note for applicability.

Part 5B. Family Resource Center Grant Program.

§ 143B-152.15. Program evaluation; reporting requirements.

Editor's Note. —

Session Laws 2001-424, ss. 21.48(a) to (e), as amended by Session Laws 2002-126, s. 10.34, provide: "(a) The Department of Health and Human Services shall evaluate the use of all State and federal funds allocated to Family Resource Centers that primarily serve families with minor children. The evaluation shall incorporate data collected from these Centers and shall assess the effectiveness of each program in achieving established program goals including the following:

"(1) Enhancing children's development and ability to attain academic and social success.

"(2) Promoting successful transition from early childhood education programs and child care to public schools.

"(3) Assisting families in achieving economic independence and self-sufficiency.

"(4) Mobilizing public and private community resources to help children and families in need.

"(5) Ensuring that plans are designed and implemented to provide families with services in a holistic family centered manner.

"(b) The Department shall establish performance measurement protocol, based on national standards or best practice models, to determine the effectiveness of services provided by all family resource centers specified in subsection (a) of this section [s. 21.48(a) of Session Laws 2001-424].

"(c) Unless inconsistent with federal law, the Department shall ensure that all programs have similar core services and the same goals while eliminating duplication of effort at the local level. The Department shall redirect the funds for Family Resource Centers to focus on those core services that have a direct impact on strengthening family support.

"(d) In determining the allocation of funding, the Department shall ensure that Family Resource Centers have demonstrated that they have collaborative arrangements with other public and private agencies that have similar purposes that delineate specific roles and responsibilities to ensure effectiveness and efficiency in the operation of Family Resource Centers.

"(e) The Department shall report on activities under this section [s. 21.48 of Session Laws 2001-424]. This report is due to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on May 1, 2003."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Part 10. North Carolina Medical Care Commission.

§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties.

Administrative Rules Governing Sanitation of Hospitals, Nursing Homes, Rest Homes, and Other Institutions. — Session Laws 2002-160, ss. 1-5, effective October 17, 2002, provide: "Notwithstanding G.S. 150B-21.3(b), amendments to the following rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18, 2001, become effective March 1, 2003: 15A NCAC 18A.1301 (Definitions), 15A NCAC 18A.1302 (Approval of Plans), 15A NCAC 18A.1304 (Inspections), 15A NCAC 18A.1305 (Grading Residential Care Facilities in Institutions), 15A NCAC 18A.1306 (Public Display of Grade Card), 15A NCAC 18A.1307 (Reinspections), 15A NCAC 18A.1308 (Approved Institutions), 15A NCAC 18A.1309 (Floors), 15A NCAC 18A.1310 (Walls and Ceilings), 15A NCAC 18A.1312 (Toilet: Handwashing: Laundry: and Bathing Facilities), 15A NCAC 18A.1313 (Water Supply), 15A NCAC 18A.1314 (Drinking Water Facilities: Ice

Handling), 15A NCAC 18A.1315 (Liquid Wastes), 15A NCAC 18A.1316 (Solid Wastes), 15A NCAC 18A.1317 (Vermin Control: Premises: Animal Maintenance), 15A NCAC 18A.1318 (Miscellaneous), 15A NCAC 18A.1319 (Furnishings and Patient Contact Items), 15A NCAC 18A.1320 (Food Service Utensils and Equipment), 15A NCAC 18A.1322 (Milk and Milk Products), 15A NCAC 18A.1323 (Food Protection), and 15A NCAC 18A.1324 (Employees).

"Notwithstanding G.S. 150B-21.3(b), 15A NCAC 18A.1327 (Incorporated Rules) adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18, 2001 becomes effective March 1, 2003.

"Notwithstanding G.S. 150B-21.3(b), amendments to 15A NCAC 18A.1311 (Lighting, Ventilation and Moisture Control) and 15A NCAC 18A.1321 (Food Supplies) adopted by the Commission for Health Services and approved by the Rules Review Commission on November 15, 2001 become effective March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources, with the assistance of local health departments, shall field test the amended rules listed in Sections 1 through 3 of this act by conducting trial inspections of a representative sample of facilities subject to the amended rules throughout the State. Trial inspections under the amended rules shall be performed during the period 1 October 2002 through 1 February 2003 in conjunction with the regular inspection of the representative sample of facilities under rules in effect during the field test period. A facility that is subject to a trial inspection shall not be liable for an enforcement action for any violation of an amended rule that is observed during a trial inspection but may be liable for an enforcement action under rules in effect during the field test period. The purposes of the field test shall be to determine what expenditures, if any, will be required of facilities in order to comply with the amended rules and whether the amended rules will result in lower inspection grades for facilities. As a part of the field test, the Division shall also review the amended rules, giving particular attention to applicable federal regulations and to the incorporation by reference of any other rules or standards in the amended rules, to determine whether the amended rules will result in any duplication or conflict in applicable requirements or standards and whether the amended rules will result in duplicative or conflicting inspection or enforcement policies or procedures. The Division of Environmental Health shall compile and analyze field test data to determine whether any of the amended rules should be revised. The Division shall report the results of the field test required by this section, any recommendations to the Commission for Health Services regarding revisions to the amended rules, and the status of any recommended rule revisions to the Environmental Review Commission on or before March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources shall offer training to staff of facilities that are subject to the amended rules listed in Sections 1 through 3 of this act. Training shall be offered in the various regions of the State as appropriate and shall include information on the requirements of the amended rules, enforcement policies and procedures, and updated information as to any revisions to the amended rules that may be recommended as a result of the field test of the amended rules required by Section 4 of this act."

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Early Childhood Education and Development Initiatives. — Session Laws 2001-424, ss. 21.72(a) to (e), as amended by Session Laws 2002-126, s. 10.55(f), provide: "(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For the purposes of this subsection administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing contracting, and information systems management.

"(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

"(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.;

"(2) For amounts greater than five thousand dollars ($5,000) but less than fifteen thousand dollars ($15,000), three written quotes;

"(3) For amounts of fifteen thousand dollars

($15,000) or more but less than forty thousand dollars ($40,000), a request for proposal process; and

"(4) For amounts of forty thousand dollars ($40,000) or more, request for proposal process and advertising in a major newspaper.

"(c) 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 carryforward 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 [s. 21.72(c) of Session Laws 2001-424].

"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.

"(d) Counties participating in the Program may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes, with other applicable requirements of State law or rule, including rules adopted for nonlicensed child care by the Social Services Commission, and with applicable federal regulations.

"(e) The Department of Health and Human Services shall continue to implement the performance-based evaluation system."

Same Enhancements. — Session Laws 2001-424, ss. 21.75 (a) to (f), as amended by Session Laws 2002-126, ss. 10.55(a) and (b), provide: "(a) The North Carolina Partnership for Children, Inc., and the Department of Health and Human Services shall immediately develop and implement the following:

"(1) Policies to ensure Early Childhood Education and Development Initiatives funds are allocated to child care programs, providers, and services that serve low-income children.

"(2) Policies to ensure the allocation of all State funds and federal funds where appropriate to the neediest child care providers with priority given from the lowest licensure rating to the highest. The North Carolina Partnership

for Children, Inc., and the Department of Health and Human Services shall develop the definition of 'neediest" as used in this subdivision.

"(3) Policies to ensure the allocation of State funds and federal funds where appropriate to child care programs and providers that serve an adequate number of children and families eligible to participate in the State child care subsidy voucher program. The North Carolina Partnership for Children, Inc., and the Department of Health and Human Services shall develop policies and a definition of 'adequate' as used in this subdivision that takes into consideration the following:

"a. County economic conditions.

"b. Numbers of eligible families in a county.

"c. The diversity of child care needs in a county.

"d. Other factors that may impact on the number of child care facilities and the availability of child care in a county.

"(4) Policies to ensure the elimination of local duplication and increased efficiency in the administration of child care subsidy voucher funds, unless local partnerships in collaboration with county departments of social services can demonstrate to the Department a more efficient and effective plan for administration of child care subsidy voucher funds. These policies shall be developed and implemented no later than January 1, 2002.

"(5) Policies and procedures to ensure the unduplicated compilation of children served through State and federal child care subsidy voucher funds.

"(6) Policies and procedures to ensure the timely, accurate, and consistent reporting of information on local child care subsidy waiting lists statewide.

"(b) In consultation with the Department of Public Instruction and the North Carolina Partnership for Children, Inc., the Department of Health and Human Services shall develop and implement policies and procedures to ensure that local partnerships that allocate funds to child care providers receiving State and federal child care funds plan and coordinate with their local education agencies the following:

"(1) Selection of preschool curriculum with measurable outcomes.

"(2) Kindergarten transition activities.

"(3) Other activities needed to ensure that children transitioning from child care settings to kindergarten enter school ready to succeed.

"(c) The Department of Health and Human Services, in consultation with the North Carolina Partnership for Children, Inc., and the Office of State Budget and Management, shall develop a separate NCPC, Early Childhood Education and Development Initiative Program budget, within the Division of Child Development fund code for the purpose of segregating all expenditures related to the administration and operation of the statewide Smart Start program.

"(d) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2001-2002 and 2002-2003 shall be administered and distributed in the following manner:

"(1) The North Carolina Partnership for Children, Inc., shall develop a policy to allocate the reduction of funds for Early Childhood Education and Development Initiatives for the 2001-2002 and 2002-2003 fiscal years.

"(2) The North Carolina Partnership for Children, Inc., administration shall be reduced by ten percent (10%) from the 2000-2001 fiscal year level.

"(3) The Department of Health and Human Services Smart Start administration shall be reduced by ten percent (10%) from the 2000-2001 fiscal year level.

"(4) Capital expenditures and playground equipment expenditures are prohibited for fiscal years 2001-2002 and 2002-2003. For the purposes of this section, 'capital expenditures' means expenditures for capital improvements as defined in G.S. 143-34.40.

"(5) Expenditure of State funds for advertising and promotional activities are prohibited for fiscal year 2002-2003.

"(e) The allocation of fiscal year 2000-2001 State carryforward funds is prohibited, and all fiscal year 2000-2001 unspent funds shall revert to the General Fund.

"(f) For the 2001-2002 and 2002-2003 fiscal years, the North Carolina Partnership for Children, Inc., shall not approve local partnership plans that allocate State funds to child care providers for one-time quality improvement initiatives in the following circumstances:

"(1) Child care facilities with licensure of four or five stars, unless the expenditure of funds is to expand capacity for low-income children.

"(2) Child care facilities that do not accept child care subsidy funds.

"(3) Child care facilities that previously received quality improvement grants whose quality initiatives failed to increase licensure."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the

Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is 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 Partner-

ship 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) Repealed by Session Laws 2001-424, s. 21.75(h), effective July 1, 2001.

(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) 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.

(d) The North Carolina Partnership for Children, Inc., shall make a report no later than December 1 of each year to the General Assembly that shall include the following:

(1) A description of the program and significant services and initiatives.
(2) A history of Smart Start funding and the previous fiscal year's expenditures.
(3) The number of children served by type of service.
(4) The type and quantity of services provided.
(5) The results of the previous year's evaluations of the Initiatives or related programs and services.
(6) A description of significant policy and program changes.
(7) Any recommendations for legislative action.

(e) The North Carolina Partnership shall develop guidelines for local partnerships to follow in selecting capital projects to fund. The guidelines shall include assessing the community needs in relation to the quantity of child care centers, assessing the cost of purchasing or constructing new facilities as opposed to renovating existing facilities, and prioritizing capital needs such as construction, renovations, and playground equipment and other amenities. (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); 2001-424, ss. 21.75(h), 21.75(i); 2002-126, s. 10.55(d).)

Early Childhood Education and Development Initiatives. — Session Laws 2001-424, ss. 21.75 (a) to (f), as amended by Session Laws 2002-126, ss. 10.55(a) and (b), provide: "(a) The North Carolina Partnership for Children, Inc., and the Department of Health and Human Services shall immediately develop and implement the following:

"(1) Policies to ensure Early Childhood Education and Development Initiatives funds are allocated to child care programs, providers, and services that serve low-income children.

"(2) Policies to ensure the allocation of all State funds and federal funds where appropriate to the neediest child care providers with priority given from the lowest licensure rating to the highest. The North Carolina Partnership for Children, Inc., and the Department of Health and Human Services shall develop the definition of 'neediest' as used in this subdivision.

"(3) Policies to ensure the allocation of State funds and federal funds where appropriate to child care programs and providers that serve

an adequate number of children and families eligible to participate in the State child care subsidy voucher program. The North Carolina Partnership for Children, Inc., and the Department of Health and Human Services shall develop policies and a definition of 'adequate' as used in this subdivision that takes into consideration the following:

"a. County economic conditions.

"b. Numbers of eligible families in a county.

"c. The diversity of child care needs in a county.

"d. Other factors that may impact on the number of child care facilities and the availability of child care in a county.

"(4) Policies to ensure the elimination of local duplication and increased efficiency in the administration of child care subsidy voucher funds, unless local partnerships in collaboration with county departments of social services can demonstrate to the Department a more efficient and effective plan for administration of child care subsidy voucher funds. These policies shall be developed and implemented no later than January 1, 2002.

"(5) Policies and procedures to ensure the unduplicated compilation of children served through State and federal child care subsidy voucher funds.

"(6) Policies and procedures to ensure the timely, accurate, and consistent reporting of information on local child care subsidy waiting lists statewide.

"(b) In consultation with the Department of Public Instruction and the North Carolina Partnership for Children, Inc., the Department of Health and Human Services shall develop and implement policies and procedures to ensure that local partnerships that allocate funds to child care providers receiving State and federal child care funds plan and coordinate with their local education agencies the following:

"(1) Selection of preschool curriculum with measurable outcomes.

"(2) Kindergarten transition activities.

"(3) Other activities needed to ensure that children transitioning from child care settings to kindergarten enter school ready to succeed.

"(c) The Department of Health and Human Services, in consultation with the North Carolina Partnership for Children, Inc., and the Office of State Budget and Management, shall develop a separate NCPC, Early Childhood Education and Development Initiative Program budget, within the Division of Child Development fund code for the purpose of segregating all expenditures related to the administration and operation of the statewide Smart Start program.

"(d) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2001-2002 and 2002-2003 shall be administered and distributed in the following manner:

"(1) The North Carolina Partnership for Children, Inc., shall develop a policy to allocate the reduction of funds for Early Childhood Education and Development Initiatives for the 2001-2002 and 2002-2003 fiscal years.

"(2) The North Carolina Partnership for Children, Inc., administration shall be reduced by ten percent (10%) from the 2000-2001 fiscal year level.

"(3) The Department of Health and Human Services Smart Start administration shall be reduced by ten percent (10%) from the 2000-2001 fiscal year level.

"(4) Capital expenditures and playground equipment expenditures are prohibited for fiscal years 2001-2002 and 2002-2003. For the purposes of this section, 'capital expenditures' means expenditures for capital improvements as defined in G.S. 143-34.40.

"(5) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal year 2002-2003.

"(e) The allocation of fiscal year 2000-2001 State carryforward funds is prohibited, and all fiscal year 2000-2001 unspent funds shall revert to the General Fund.

"(f) For the 2001-2002 and 2002-2003 fiscal years, the North Carolina Partnership for Children, Inc., shall not approve local partnership plans that allocate State funds to child care providers for one-time quality improvement initiatives in the following circumstances:

"(1) Child care facilities with licensure of four or five stars, unless the expenditure of funds is to expand capacity for low-income children.

"(2) Child care facilities that do not accept child care subsidy funds.

"(3) Child care facilities that previously received quality improvement grants whose quality initiatives failed to increase licensure."

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 10.55(d), effective July 1, 2002, added subsection (e).

OPINIONS OF ATTORNEY GENERAL

Simultaneous Membership in County Partnership for Children and County Interagency Transportation Corporation. — Members of a county partnership for children, who were also members of the board of directors of the county interagency transportation corporation, did not violate this section by remaining on the partnership board and participating in a vote to award a grant to the interagency transportation corporation where one of the individuals who sat on both boards was the county administrator and the other was chairman of the interagency transportation corporation; those members gained nothing personally by a grant to the interagency transportation corporation. See opinion of Attorney General to Kipling Godwin, Chairman, Columbus County Partnership for Children, 1999 N.C. AG LEXIS 36 (8/27/99).

§ 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. This needs assessment shall include a statewide assessment of capital needs. 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); 2002-126, s. 10.55(e).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 10.55(e), effective July 1, 2002, added the second sentence of subdivision (a)(1a).

Part 28. North Carolina Council on the Holocaust.

§§ 143B-216.20 through 143B-216.23: Recodified as G.S. 143A-48.1(a) to (d) by Session Laws 2002-126, s. 10.10D(a), effective October 1, 2002.

Part 29. Council for the Deaf and the Hard of Hearing; Division of Services for the Deaf and the Hard of Hearing.

§ 143B-216.33. Division of Services for the Deaf and the Hard of Hearing — creation, powers and duties.

(a) **(Effective until July 1, 2003)** There is hereby created within the Department of Health and Human Services, the Division of Services for the Deaf and the Hard of Hearing. The Division shall have the powers and duties including the following:

(1) To review existing programs for persons who are deaf or hard of hearing in the State, and make recommendations to the Secretary of the Department of Health and Human Services and to the Superintendent of the Department of Public Instruction for improvements to such programs;

(2) Repealed by Session Laws 1999-237, s. 11.4(b), effective July 1, 1999.

(3) To provide a network of resource centers for local access to services such as interpreters, information and referral, telephone relay, and advocacy for persons who are deaf or hard of hearing;

(4) To collect, study, maintain, publish and disseminate information relative to all aspects of deafness;

(5) To promote public awareness of the needs of, resources and opportunities available to persons who are deaf or hard of hearing;

(6) To provide technical assistance to agencies and organizations in the development of services to persons who are deaf or hard of hearing;

(7) To administer the Telecommunications Program for the Deaf pursuant to G.S. 143B-216.34; and

(8) To establish training and evaluation standards for determination of competency of individuals serving as interpreters for persons who are deaf or hard of hearing.

(a) **(Effective July 1, 2003)** There is hereby created within the Department of Health and Human Services, the Division of Services for the Deaf and the Hard of Hearing. The Division shall have the powers and duties including the following:

(1) To review existing programs for persons who are deaf or hard of hearing in the State, and make recommendations to the Secretary of the Department of Health and Human Services and to the Superintendent of the Department of Public Instruction for improvements to such programs;

(2) Repealed by Session Laws 1999-237, s. 11.4(b).

G.S. 143B-216.33(a) is set out twice. See notes.

(3) To provide a network of resource centers for local access to services such as interpreters, information and referral, telephone relay, and advocacy for persons who are deaf or hard of hearing;
(4) To collect, study, maintain, publish and disseminate information relative to all aspects of deafness;
(5) To promote public awareness of the needs of, resources and opportunities available to persons who are deaf or hard of hearing;
(6) To provide technical assistance to agencies and organizations in the development of services to persons who are deaf or hard of hearing;
(7) To administer the Telecommunications Program for the Deaf pursuant to G.S. 143B-216.34; and
(8) To provide training and skill development programming to enhance the competence of individuals who aspire to be licensed or who are currently licensed as interpreters or transliterators under Chapter 90D of the General Statutes.

(b) The Division shall function under the authority of the Department of Health and Human Services and the Secretary of the Department of Health and Human Services as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary.

(c) The Department of Health and Human Services may receive moneys from any source, including federal funds, gifts, grants and bequests which shall be expended for the purposes designated in this Part. Gifts and bequests received shall be deposited in a trust fund with the State Treasurer who shall hold them in trust in a separate account in the name of the Division. The cash balance of this account may be pooled for investment purposes, but investment earnings shall be credited pro rata to this participating account. Moneys deposited with the State Treasurer in the trust fund account pursuant to this subsection, and investment earnings thereon, are available for expenditure without further authorization from the General Assembly. Such funds shall be administered by the Division under the direction of the director and fiscal officer of the Division and will be subject to audits normally conducted with the agency.

(d) The Secretary of the Department of Health and Human Services shall adopt rules to implement this Part. (1989, c. 533, s. 2; 1997-443, s. 11A.118(a); 1999-237, s. 11.4(b); 2002-182, s. 5.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2003. The second version of subsection (a) set out above is effective July 1, 2003.

Effect of Amendments. —
Session Laws 2002-182, s. 5, effective July 1, 2003, rewrote subdivison (a)(8), which formerly read: "To establish training and evaluation standards for determination of competency of individuals serving as interpreters for persons who are deaf or hard of hearing."

Part 32. Heart Disease and Stroke Prevention Task Force.

§ 143B-216.60. North Carolina Heart Disease and Stroke Prevention Task Force.

(a) The North Carolina Heart Disease and Stroke Prevention Task Force is created in the Department of Health and Human Services.

(b) The Task Force shall have 27 members. The Governor shall appoint the Chair, and the Vice-Chair shall be elected by the Task Force. The Director of the Department of Health and Human Services, the Director of the Division of Medical Assistance in the Department of Health and Human Services, and the

Director of the Division of Aging in the Department of Health and Human Services, or their designees, shall be members of the Task Force. Appointments to the Task Force shall be made as follows:

(1) By the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as follows:
   a. Three members of the Senate;
   b. A heart attack survivor;
   c. A local health director;
   d. A certified health educator;
   e. A hospital administrator; and
   f. A representative of the North Carolina Association of Area Agencies on Aging.

(2) By the General Assembly upon the recommendation of the Speaker of the House of Representatives, as follows:
   a. Three members of the House of Representatives;
   b. A stroke survivor;
   c. A county commissioner;
   d. A licensed dietitian utritionist;
   e. A pharmacist; and
   f. A registered nurse.

(3) By the Governor, as follows:
   a. A practicing family physician, pediatrician, or internist;
   b. A president or chief executive officer of a business upon recommendation of a North Carolina wellness council which is a member of the Wellness Councils of America;
   c. A news director of a newspaper or television or radio station;
   d. A volunteer of the North Carolina Affiliate of the American Heart Association;
   e. A representative from the North Carolina Cooperative Extension Service;
   f. A representative of the Governor's Council on Physical Fitness and Health; and
   g. Two members at large.

(c) Each appointing authority shall assure insofar as possible that its appointees to the Task Force reflect the composition of the North Carolina population with regard to ethnic, racial, age, gender, and religious composition.

(d) The General Assembly and the Governor shall make their appointments to the Task Force not later than 30 days after the adjournment of the 1995 General Assembly, Regular Session 1995. A vacancy on the Task Force shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(e) The Task Force shall meet at least quarterly or more frequently at the call of the Chair.

(f) The Task Force Chair may establish committees for the purpose of making special studies pursuant to its duties, and may appoint non-Task Force members to serve on each committee as resource persons. Resource persons shall be voting members of the committees and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. Committees may meet with the frequency needed to accomplish the purposes of this section.

(g) Members of the Task Force shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1, 138-5 and 138-6, as applicable.

(h) A majority of the Task Force shall constitute a quorum for the transaction of its business.

(i) The Task Force may use funds allocated to it to establish two positions and for other expenditures needed to assist the Task Force in carrying out its duties.

(j) The Heart Disease and Stroke Prevention Task Force has the following duties:

(1) To undertake a statistical and qualitative examination of the incidence of and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the heart disease and stroke burden in North Carolina.

(2) To publicize the profile of the heart disease and stroke burden and its preventability in North Carolina.

(3) To identify priority strategies which are effective in preventing and controlling risks for heart disease and stroke.

(4) To identify, examine limitations of, and recommend to the Governor and the General Assembly changes to existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.

(5) To determine and recommend to the Governor and the General Assembly the funding and strategies needed to enact new or to modify existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.

(6) To adopt and promote a statewide comprehensive Heart Disease and Stroke Prevention Plan to the general public, State and local elected officials, various public and private organizations and associations, businesses and industries, agencies, potential funders, and other community resources.

(7) To identify and facilitate specific commitments to help implement the Plan from the entities listed in subdivision (6) above.

(8) To facilitate coordination of and communication among State and local agencies and organizations regarding current or future involvement in achieving the aims of the Heart Disease and Stroke Prevention Plan.

(9) To receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in North Carolina.

(k) Notwithstanding Section 11.57 of S.L. 1999-237, the Task Force shall submit a final report to the Governor and the General Assembly by June 30, 2003, and a report to each subsequent regular legislative session within one week of its convening. (1995-507, s. 26.9; 1997-443, ss. 11A-122, 11A-123; 2001-424, s. 21.95; 2002-126, s. 10.45)

Editor's Note. — This Part and Part heading were created at the direction of the Revisor of Statutes.

Subsections (b) through (k) of Session Laws 1995-507, s. 26.9, effective July 1, 1995, were enacted as subsections (a) through (j) of this section, respectively, at the direction of the Revisor of Statutes. The last sentence of Session Laws, 2001-424, s. 21.95, effective July 1, 2001, as rewritten by Session Laws 2002-126, s. 10.45, effective July 1, 2002, was enacted as subsection (k) of this section at the direction of the Revisor of Statutes.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-260. Department of Correction — creation.

CASE NOTES

Applied in Hamilton v. Freeman, 147 N.C. App. 195, 554 S.E.2d 856, 2001 N.C. App. LEXIS 1147 (2001), cert. denied, 355 N.C. 285, 560 S.E.2d 802 (2002).

§ 143B-262.1. Department of Correction — Substance Abuse Program.

(a) The Substance Abuse Program established by subsection (d) of § 143B-262 shall be offered in a correctional facility, or a portion of a correctional facility that is self-contained, so that the residential and program space is separate from any other programs or inmate housing, and shall be operational by January 1, 1988, at such unit as the Secretary may designate.

(b) An Assistant Secretary for Substance Abuse shall be employed and shall report directly to the Office of the Secretary of Correction. The duties of the Assistant Secretary shall include the following:

(1) Administer and coordinate all substance abuse programs, grants, contracts, and related functions in the Department of Correction;

(2) Develop and maintain working relationships and agreements with agencies and organizations that will assist in developing and operating a Substance Abuse Program in the Department of Correction;

(3) Develop and coordinate the use of volunteers in the Substance Abuse Program;

(4) Develop and present training programs related to substance abuse for employees and others at all levels in the agency;

(5) Develop programs that provide effective treatment for inmates, probationers, and parolees with substance abuse problems;

(6) Maintain contact with key leaders in the substance abuse field and active supporters of the Correction Program;

(7) Supervise directly the directors of treatment units, specialized personnel, and programs that exist or may be developed in the Department of Correction; and

(8) Develop employee assistance programs for employees with substance abuse problems.

(c), (d) Repealed by Session Laws 2002-126, s. 17.7, effective July 1, 2002.

(e) In the unit there shall be a unit superintendent under the Division of Prisons and other custodial, administrative, and support staff as required for a medium custody facility for approximately 100 inmates. The unit superintendent shall be responsible for all matters pertaining to custody and administration of the unit. The Assistant Secretary shall designate an employee to administer the inpatient treatment program under the direction of the Assistant Secretary for Substance Abuse.

(f) Extensive use may be made of inmates working in the role of ancillary staff, peer counselors, role models, or group leaders as the program manager determines. Additional resource people who may be required for specialized treatment activities, presentations, or group work may be employed on a fee or contractual basis.

(g) Repealed by Session Laws 2002-126, s. 17.7, effective July 1, 2002.
(h) Admission priorities shall be established as follows:
(1) Court recommendation.
(2) Evaluation and referral from reception and diagnostic centers.
(3) General staff referral.
(4) Self-referral.

The Program shall include extensive follow-up after the period of intensive treatment. There will be specific plans for each departing inmate for follow-up, including active involvement with Alcoholics Anonymous, community resources, and personal sponsorship. (1987, c. 738, s. 111(c); 1987 (Reg. Sess., 1988), c. 1086, s. 126.1(a); 2002-126, s. 17.7.)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 17.7, effective July 1, 2002, substituted "correctional" for "medium custody" twice in subsection (a); deleted "A Correctional Administrator I shall be employed to manage programs for offenders with substance abuse problems in the Department of Correction and its divisions. The Correctional Administrator I shall report to the Assistant Secretary for Substance Abuse. A Secretary IV shall be employed to assist the Correctional Administrator I. An Administrative Officer II and a Secretary IV shall be employed to assist the Assistant Secretary and work under his direction and management" in subsection (b); deleted former subsection (c) regarding additional program staff; deleted former subsection (d) regarding duties of the Program Director; substituted "Assistant Secretary shall designate an employee to" for "Correctional Program Director II will" in the last sentence of subsection (e); and deleted former subsection (g) regarding the number of unit admissions per week.

§ 143B-262.4. Deferred prosecution, community service restitution, and volunteer program.

(a) The Department of Correction may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Correction may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator shall be made in consultation with the chief district court judge in the district to which the coordinator is assigned. Each county shall provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of two hundred dollars ($200.00) shall be paid by all persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before the person may participate in the community service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement.

(c) The Secretary may designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection shall be furnished to the individual at the time of assignment of community service work by the community service coordinator.

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Correction to supervise each of the community service program districts shall reside in the district in which the supervisor works.

(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers [driver's] license issued to the person and notify the Division of Motor Vehicles to revoke any drivers [driver's] license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation. (1983 (Reg. Sess., 1984), c. 1034, s. 102; 1985, c. 451; 1985 (Reg. Sess., 1986), c. 1012, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 118; 1989, c. 752, s. 109; 1995, c. 330, s. 2; c. 507, s. 20(a); 1997-234, s. 2; 1998-217, s. 34; 2001-487, ss. 91(a), (b); 2002-126, s. 29A.1(c).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 29A.1(c), effective October 1, 2002, and applicable to fees assessed or collected on or after that date, rewrote subsection (b).

§ 143B-262.5. Security Staffing.

(a) The Department of Correction shall conduct security staffing post-audits of each prison at least biannually, the first such audit to be completed during the 2002-2003 fiscal year. The initial post-audit shall be conducted jointly by Department staff and a consultant, external to the Department, and shall include analysis of the staffing levels assigned for supervision of correctional officers.

(b) The Department of Correction shall update the security staffing relief formula biannually, the first update to be completed during the 2002-2003 fiscal year. Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training. (2002-126, s. 17.5(a), (b).)

Editor's Note. — Session Laws 2002-126, s. 17.5 (a) and (b), effective July 1, 2002, were codifed as subsections (a) and (b) of this section, respectively, at the direction of the Revisor of Statutes.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 17.5(c), provides: "The Department of Correction shall report the results of the initial security staffing post-audits and relief formula update to the Senate and House of Representatives Appropriations Subcommittee on Justice and Public Safety by April 1, 2003."

Session Laws 2002-126, s, 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year."

Session Laws 2002-126, s.31.7, makes this section effective July 1, 2002.

Session Laws 2002-126, s. 31.6 is a severability clause.

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

Editor's Note. —

Session Laws 2001-424, s. 25.21, as amended by Session Laws 2002-126, s. 17.3, provides: "The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

"(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the previous quarter and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole;

"(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

"(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2002-2003 fiscal year and by the end of the 2003-2004 fiscal year."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

ARTICLE 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273. Short title.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, ss. 17.13(a)-(d), provide: "(a) Notwithstanding the provisions of G.S. 143B-273.16, Caswell and Union Counties shall not receive implementation funding for the Criminal Justice Partnership Program for the 2002-2003 fiscal year. However, those counties will be eligible to reapply for funding in future years.

"(b) It is the intent of the General Assembly that State Criminal Justice Partnership Program funds not be used to fund case manager positions when those services can be reasonably provided by Division of Community Corrections personnel or by the Treatment Alternatives to Street Crime (TASC) Program in the Department of Health and Human Services. The Division of Community Corrections shall identify at least the sum of three hundred fifty-nine thousand three hundred thirty dollars ($359,330) in cost savings during the 2002-2003 fiscal year by eliminating funding for personnel in these cases. However, the reduction in implementation grant funding for those affected counties shall not in any case exceed twelve and one-half percent (12.5%) of that county's 2001-2002 funding.

"Within 20 days of the date this act becomes law, each county Criminal Justice Partnership advisory board shall review the Division's recommended modifications for providing Criminal Justice Partnership Program case management services in its jurisdiction and determine whether these services can be reasonably provided in the manner proposed. If the local board determines that the services cannot be reasonably provided, the jurisdiction may opt instead to have the designated reduction made from other items in its budget. If the board determines that the services can be reasonably provided, the recommended modifications shall be reviewed and approved by the State Criminal Justice Partnership Advisory Board within another 10 days. Revised contracts should be sent to the counties no later than 45 days after this act becomes law. The Division of Community Corrections shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the specific adjustments within 60 days of the enactment of the budget for the 2002-2003 fiscal year.

"(c) Programs that were not operational between July 1, 2002, and the enactment of the 2002-2003 State budget shall be limited to no more than seventy-five percent (75%) of the funding they would have otherwise received from the Criminal Justice Partnership Program.

"(d) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143B-273.15. Funding formula.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 17.13(d), provides: "Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-

County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143B-273.16. Continued eligibility.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 17.13(a), provides: "Notwithstanding the provisions of G.S. 143B-273.16, Caswell and Union Counties shall not receive implementation funding for the Criminal Justice Partnership Program for the 2002-2003 fiscal year. However, those counties will be eligible to reapply for funding in future years."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§ 143B-279.3. Department of Environment and Natural Resources — structure.

(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

(1) Radiation Protection Section, Division of Facility Services, Department of Health and Human Services.

(2), (3) Repealed by Session Laws 1997-443, s. 11A.6.

(4) Coastal Management Division, Department of Natural Resources and Community Development.

(5) Environmental Management Division, Department of Natural Resources and Community Development.

(6) Forest Resources Division, Department of Natural Resources and Community Development.

(7) Land Resources Division, Department of Natural Resources and Community Development.

(8) Marine Fisheries Division, Department of Natural Resources and Community Development.

(9) Parks and Recreation Division, Department of Natural Resources and Community Development.

(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.

(11) Water Resources Division, Department of Natural Resources and Community Development.
(12) North Carolina Zoological Park, Department of Natural Resources and Community Development.
(13) Albemarle-Pamlico Study.
(14) Office of Marine Affairs, Department of Administration.
(15) Environmental Health Section, Division of Health Services, Department of Health and Human Services.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

(1) Repealed by Session Laws 1993, c. 501, s. 27.
(2) Radiation Protection Commission, Department of Health and Human Services.
(3) Repealed by Session Laws 1997-443, s. 11A.6.
(4) Water Treatment Facility Operators Board of Certification, Department of Health and Human Services.
(5) to (8) Repealed by Session Laws 1997-443, s. 11A.6.
(9) Coastal Resources Commission, Department of Natural Resources and Community Development.
(10) Environmental Management Commission, Department of Natural Resources and Community Development.
(11) Air Quality Council, Department of Natural Resources and Community Development.
(12) Wastewater Treatment Plant Operators Certification Commission, Department of Natural Resources and Community Development.
(13) Forestry Council, Department of Natural Resources and Community Development.
(14) North Carolina Mining Commission, Department of Natural Resources and Community Development.
(15) Advisory Committee on Land Records, Department of Natural Resources and Community Development.
(16) Marine Fisheries Commission, Department of Natural Resources and Community Development.
(17) Parks and Recreation Council, Department of Natural Resources and Community Development.
(18) Board of Trustees of the Recreation and Natural Heritage Trust Fund, Department of Natural Resources and Community Development.
(19) North Carolina Trails Committee, Department of Natural Resources and Community Development.
(20) Sedimentation Control Commission, Department of Natural Resources and Community Development.
(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.
(22) North Carolina Zoological Park Council, Department of Natural Resources and Community Development.
(23) Repealed by Session Laws 1997-286, s. 6.

(c)(1) Repealed by Session Laws 2002, ch. 70, s. 1, effective July 1, 2002.
(2) There is created a division within the environmental area of the Department of Environment and Natural Resources to be named the Division of Waste Management. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Health and Human Services are transferred in their entirety to the Division of Waste Management of the Department of Environment and Natural Resources.

(3) There is created a division within the environmental areas of the Department of Environment and Natural Resources to be named the Division of Environmental Health. All functions, powers, duties and obligations of the Division of Environmental Health of the Department of Environment and Natural Resources are transferred in their entirety to the Division of Environmental Health, Department of Environment and Natural Resources. All functions, powers, duties, and obligations of the Division of Radiation Protection of the Department of Environment and Natural Resources are transferred in their entirety to the Division of Environmental Health of the Department of Environment and Natural Resources.

(d) The Department of Environment and Natural Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State. (1989, c. 727, s. 3; 1989 (Reg. Sess., 1990), c. 1004, s. 31; 1991, c. 342, ss. 16(a), (b); 1993, c. 321, ss. 28(a), (b); c. 501, s. 27; 1995 (Reg. Sess., 1996), c. 743, s. 20; 1997-286, s. 6; 1997-443, ss. 11A.6, 11A.123; 2002-70, s. 1.)

Effect of Amendments. — Session Laws 2002-70, s. 1, effective July 1, 2002, repealed subdivision (c)(1), and added the last sentence in subdivision (c)(3).

Administrative Rules Governing Sanitation of Hospitals, Nursing Homes, Rest Homes, and Other Institutions. — Session Laws 2002-160, ss. 1-5, effective October 17, 2002, provide: "Notwithstanding G.S. 150B-21.3(b), amendments to the following rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18, 2001, become effective March 1, 2003: 15A NCAC 18A.1301 (Definitions), 15A NCAC 18A.1302 (Approval of Plans), 15A NCAC 18A.1304 (Inspections), 15A NCAC 18A.1305 (Grading Residential Care Facilities in Institutions), 15A NCAC 18A.1306 (Public Display of Grade Card), 15A NCAC 18A.1307 (Reinspections), 15A NCAC 18A.1308 (Approved Institutions), 15A NCAC 18A.1309 (Floors), 15A NCAC 18A.1310 (Walls and Ceilings), 15A NCAC 18A.1312 (Toilet: Handwashing: Laundry: and Bathing Facilities), 15A NCAC 18A.1313 (Water Supply), 15A NCAC 18A.1314 (Drinking Water Facilities: Ice Handling), 15A NCAC 18A.1315 (Liquid Wastes), 15A NCAC 18A.1316 (Solid Wastes), 15A NCAC 18A.1317 (Vermin Control: Premises: Animal Maintenance), 15A NCAC 18A.1318 (Miscellaneous), 15A NCAC 18A.1319 (Furnishings and Patient Contact Items), 15A NCAC 18A.1320 (Food Service Utensils and Equipment), 15A NCAC 18A.1322 (Milk and Milk Products), 15A NCAC 18A.1323 (Food Protection), and 15A NCAC 18A.1324 (Employees).

"Notwithstanding G.S. 150B-21.3(b), 15A NCAC 18A.1327 (Incorporated Rules) adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18, 2001 becomes effective March 1, 2003.

"Notwithstanding G.S. 150B-21.3(b), amendments to 15A NCAC 18A.1311 (Lighting, Ventilation and Moisture Control) and 15A NCAC 18A.1321 (Food Supplies) adopted by the Commission for Health Services and approved by the Rules Review Commission on November 15, 2001 become effective March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources, with the assistance of local health departments, shall field test the amended rules listed in Sections 1 through 3 of this act by conducting trial inspections of a representative sample of facilities subject to the amended rules throughout the State. Trial inspections under the amended rules shall be performed during the period 1 October 2002 through 1 February 2003 in conjunction with the regular inspection of the representative sample of facilities under rules in effect during the field test period. A facility that is subject to a trial inspection shall not be liable for an enforcement action for any violation of an amended rule that is observed during a trial inspection but may be liable for an enforcement action under rules in effect during the field test period. The purposes of the field test shall be to determine what expenditures, if any, will be required of facilities in order to comply with the amended rules and whether the amended rules will result in lower inspection grades for facilities. As a part of the field test, the Division shall also review the amended rules, giving particular attention to applicable federal regulations and to the incorporation by reference of any other rules or standards in the amended rules, to determine whether the amended rules will result in any duplication or conflict in applicable requirements or standards and

whether the amended rules will result in duplicative or conflicting inspection or enforcement policies or procedures. The Division of Environmental Health shall compile and analyze field test data to determine whether any of the amended rules should be revised. The Division shall report the results of the field test required by this section, any recommendations to the Commission for Health Services regarding revisions to the amended rules, and the status of any recommended rule revisions to the Environmental Review Commission on or before March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources shall offer training to staff of facilities that are subject to the amended rules listed in Sections 1 through 3 of this act. Training shall be offered in the various regions of the State as appropriate and shall include information on the requirements of the amended rules, enforcement policies and procedures, and updated information as to any revisions to the amended rules that may be recommended as a result of the field test of the amended rules required by Section 4 of this act."

§ 143B-279.9. 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 unrestricted use standards, 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 provided in G.S. 143B-279.10 or G.S. 143B-279.11, whichever applies. 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 of the land, operator of the facility, 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) The definitions set out in G.S. 143-215.94A apply to this subsection. A 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 must include an agreement by the owner, operator, or other party responsible for the discharge or release of petroleum to record a notice of any applicable land-use restrictions that meet the requirements of this subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall apply except as specifically modified by this subsection and G.S. 143B-279.11. Any restriction

on the current or future use of real property pursuant to this subsection shall be enforceable only with respect to: (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. No restriction on the current or future use of real property shall apply to any portion of any parcel or tract of land on which contamination is not located. This subsection shall not be construed to require any person to record any notice of restriction on the current or future use of real property other than the real property described in this subsection. For purposes of this subsection and G.S. 143B-279.11, the Secretary may restrict current or future use of real property only as set out in any one or more of the following subdivisions:

(1) Where soil contamination will remain in excess of unrestricted use standards, the property may be used for a primary or secondary residence, school, daycare center, nursing home, playground, park, recreation area, or other similar use only with the approval of the Department.

(2) Where soil contamination will remain in excess of unrestricted use standards and the property is used for a primary or secondary residence that was constructed before the release of petroleum that resulted in the contamination is discovered or reported, the Secretary may approve alternative restrictions that are sufficient to reduce the risk of exposure to contaminated soils to an acceptable level while allowing the real property to continue to be used for a residence.

(3) Where groundwater contamination will remain in excess of unrestricted use standards, installation or operation of any well usable as a source of water shall be prohibited.

(4) Any restriction on the current or future use of the real property that is agreed upon by both the owner of the real property and the Department.

(c) This section does not alter any right, duty, obligation, or liability of any owner, operator, or other responsible party under any other provision of law.

(d) As used in this section:

(1) "Unrestricted use standards" means generally applicable standards, guidance, or established methods governing contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department. Cleanup or remediation of real property to unrestricted use standards means that the property is restored to a condition such that the property and any use that is made of the property does not pose a danger or risk to public health, the environment, or users of the property that is significantly greater than that posed by use of the property prior to its having been contaminated.

(2) "Risk-based", when used in connection with cleanup, remediation, or similar terms, means cleanup or remediation of contamination of real property to a level that, although not in compliance with unrestricted use standards, does not pose a significant danger or risk to public health, the environment, or users of the real property so long as the property remains in the condition and is used in a manner that is consistent with the assumptions as to the condition and use of the property on which the determination that the level of risk is acceptable is based. (1999-198, s. 1; 2000-51, s. 1; 2001-384, ss. 1, 12; 2002-90, s. 1.)

Editor's Note. —

Session Laws 2002-90, s. 8, provides in part: "This act applies retroactively to any cleanup of 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 except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

Effect of Amendments. —

Session Laws 2002-90, s. 1, effective retroactively to 1 September 2001, rewrote subsection (b). See editor's note for applicability.

§ 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(a) 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) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section, and shall provide the owner of the site with a notarized copy of the approved Notice. After the Department approves the Notice, the owner of the site shall file a notarized copy of the approved 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 notarized copy of the approved 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 unrestricted use standards. 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 unrestricted use 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.

(g) This section does not apply to the cleanup pursuant to a remedial action plan that addresses 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.

(h) The definitions set out in G.S. 143B-279.9 apply to this section. (1999-198, s. 1; 2000-51, s. 2; 2001-384, s. 2; 2002-90, s. 2.)

Editor's Note. —

Session Laws 2002-90, s. 8, provides in part: "This act applies retroactively to any cleanup of 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 except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

Effect of Amendments. —

Session Laws 2002-90, s. 2, effective retroactively to 1 September 2001, deleted "risk based" preceding "remedial action" in subsection (g). See editor's note for applicability.

§ 143B-279.11. Recordation of residual petroleum from an underground storage tank.

(a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this section. This section applies only to a cleanup pursuant to a remedial action plan that addresses 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.

(b) The owner, operator, or other person responsible for a discharge or release of petroleum from an underground storage tank shall prepare and submit to the Department a proposed Notice that meets the requirements of this section. The proposed Notice shall be submitted to the Department (i) before the property is conveyed, or (ii) when the owner, operator, or other person responsible for the discharge or release requests that the Department issue a determination that no further action is required under the remedial action plan, whichever first occurs. The Notice shall be entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that would be sufficient as a description in an instrument of conveyance of the (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. The Notice shall identify the location of any residual petroleum known to exist on the real property at the time the Notice is prepared. The

Notice shall also identify the location of any residual petroleum known, at the time the Notice is prepared, to exist on other real property that is a result of the discharge or release. The Notice shall set out any restrictions on the current or future use of the real property that are imposed by the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users of the property.

(c) If the contamination is located on more than one parcel or tract of land, the Department may require that the owner, operator, or other person responsible for the discharge or release prepare a composite map or plat that shows all parcels or tracts. If the contamination is located on one parcel or tract of land, the owner, operator, or other person responsible for the discharge or release may prepare a map or plat that shows the parcel but is not required to do so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the Department has approved a map or plat, it shall be recorded in the office of the register of deeds and shall be incorporated into the Notice by reference.

(d) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section and shall provide the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank with a notarized copy of the approved Notice. After the Department approves the Notice, the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs. If the owner, operator, or other person responsible for the discharge or release fails to file the Notice as required by this section, any determination by the Department that no further action is required is void. The owner, operator, or other person responsible for the discharge or release, may record the Notice required by this section without the agreement of the owner of the real property. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

(e) The register of deeds shall record the notarized copy of the approved Notice and index it in the grantor index under the names of the owners of the real property.

(f) In the event that the owner, operator, or other person responsible for the discharge or release 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 the real property 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.

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use 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 real property 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, the register of deeds shall not be required to make a marginal entry. (2001-384, s. 3; 2002-90, ss. 3-5.)

Editor's Note. —

Session Laws 2002-90, s. 8, provides in part: "This act applies retroactively to any cleanup of 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 except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

Effect of Amendments. — Session Laws 2002-90, ss. 3 to 5, effective retroactively to 1 September 2001, in subsection (a), deleted "risk based" preceding "remedial action"; in subsection (b), inserted "pursuant to G.S. 143B-279.9(b)" following "Secretary" in the last sentence; and in subsection (d), inserted the third sentence. See editor's note for applicability.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

(a) There is hereby created the Environmental Management Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:

a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution.

b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established.

c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(c)(5).

d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3.

e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3.

f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111.

g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112.

h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112.
i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3.
j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56.
k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13.
l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15.
m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19.
n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29.
o. To halt dam construction pursuant to G.S. 143-215.29.
p. To grant final approval of dam construction work pursuant to G.S. 143-215.30.
q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31.
r. To direct the inspection of dams pursuant to G.S. 143-215.32.
s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107.
t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143 of the General Statutes.
u. To administer the State's authority under 33 U.S.C. § 1341 of the federal Clean Water Act.
v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(2) The Environmental Management Commission shall adopt rules:
a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107.
b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215.
c. To implement water and air quality reporting pursuant to Part 7 of Article 21 of Chapter 143 of the General Statutes.
d. To be applied in capacity use areas pursuant to G.S. 143-215.14.
e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.15 and G.S. 143-215.16.
f. Repealed by Session Laws 1983, c. 222, s. 3.
g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
h. Governing underground tanks used for the storage of oil or hazardous substances pursuant to Articles 21, 21A, or 21B of Chapter 143 of the General Statutes, including inspection and testing of these tanks and certification of persons who inspect and test tanks.
i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes.
j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes.

k. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B.

(3) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to 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.

(4) The Commission shall make rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(5) The Environmental Management Commission shall have the power to adopt rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:

a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and rules require; and

b. That the enforcement of the State laws and rules would require the applicant to also obtain a State permit in addition to the required federal permit; and

c. That the enforcement of the State laws and rules would be a duplication of effort on the part of the applicant; and

d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State.

(b) The Environmental Management Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Environmental Management Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process.

(d) The Environmental Management Commission may adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.

(e) In appointing the members of the Commission, the appointing authorities shall make every effort to ensure fair geographic representation of the Commission. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222,

s. 3; 1985, c. 551, s. 1; 1989, c. 652, s. 2; c. 727, s. 218(128); 1989 (Reg. Sess., 1990), c. 1036, s. 1; 1991 (Reg. Sess., 1992), c. 990, s. 1; 1993, c. 348, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.4(b); 1997-392, s. 2(a), (b); 1997-400, s. 3.2; 1997-443, s. 11A.119(a); 1997-458, ss. 8.4, 8.5; 1997-496, s. 16; 1998-212, s. 14.9H(f); 1999-328, s. 4.13; 2001-424, s. 19.13(a); 2002-165, s. 1.9.)

Two-Year Action Plan for Livestock Operations. — Session Laws 1999-329, s. 13.4, as amended by Session Laws 2002-148, s. 2, directs the Department of Environment and Natural Resources to report on its progress in implementing the Two-Year Action Plan for Livestock Operations to the Environmental Review Commission on or before 1 October 2002 and on or before 1 October 2003.

Effect of Amendments. —

Session Laws 2002-165, s. 1.9, effective October 23, 2002, in (a)(1)c, substituted "G.S. 143-215.108(c)(5)" for "G.S. 143-215.108(b)(5)"; in (a)(2)c, substituted "Part 7 of Article 21 of Chapter 143 of the General Statutes" for "G.S. 143-215.68"; in (a)(2)e, substituted "G.S. 143-215.15 and G.S. 143-215.16" for "G.S. 143-215.20"; and made minor punctuation changes.

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

CASE NOTES

Cited in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

OPINIONS OF ATTORNEY GENERAL

Reappointment of Members. — This section does not prohibit the reappointment of members to the Environmental Management Commission. See opinion of Attorney General to Mr. William Holman, Secretary, North Carolina Department of Environment and Natural Resources, 2000 N.C. AG LEXIS 5 (5/9/2000).

Part 5C. Division of North Carolina Aquariums.

§ 143B-289.44. North Carolina Aquariums; fees; fund.

(a) Fees. — The Secretary of Environment and Natural Resources may adopt a schedule of uniform entrance fees for the North Carolina Aquariums.

(b) Fund. — The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used for repair, renovation, expansion, maintenance, educational exhibit construction, and operational expenses at existing aquariums and to match private funds that are raised for these purposes.

(c) Disposition of Fees. — All entrance fee receipts shall be credited to the North Carolina Aquariums Fund.

(d) The Division of North Carolina Aquariums shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division by September 30 of each year a report on the North Carolina Aquariums Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year. (1997-286, s. 5; 1997-400, s. 6.3(b); 1997-443, s. 11A.119(b); 1999-49, s. 2; 2002-159, s. 46.)

Effect of Amendments. — Session Laws 2002-159, s. 46, effective October 11, 2002, inserted "renovation, expansion" following "repair" in subsection (b); and deleted the former last sentence in subsection (c), which read "The Secretary of Environment and Natural Resources may expend monies from the North Carolina Aquariums Fund only upon the authorization of the General Assembly."

Part 6. North Carolina Mining Commission.

§ 143B-290. North Carolina Mining Commission — creation; powers and duties.

There is hereby created the North Carolina Mining Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:
   a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.
   b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23, 2002.
   c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.
   d. To promulgate rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.
   e. To promulgate rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(2) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to 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.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992. (1973, c. 1262, s. 29; 1977, c. 771, s. 4; 1983, c. 279, s. 2; 1989, c. 727, s. 193; 1989 (Reg. Sess., 1990), c. 944, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 16; 1997-443-11A.119(a); 2002-165, s. 1.10.)

Effect of Amendments. — Session Laws 2002-165, s. 1.10, effective October 23, 2002, in subdivision (1), substituted "Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37" for "Interstate Mining Compact pursuant to G.S. 74-38(a)" in subparagraph a, repealed former subparagraph b, which read: "To adopt and modify rules to implement Chapter 74, Article 6, pursuant to G.S. 74-44(b)"; and made minor punctuation changes.

Part 7. Soil and Water Conservation Commission.

§ 143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services.

(a) The Soil and Water Conservation Commission of the Department of Environment and Natural Resources shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

(1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;

(2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;

(3) One member appointed at large by the Governor.

(b) The members of the Commission, except those members serving in an ex officio capacity, shall be appointed for terms of three years and shall serve until their successors are appointed and qualified. 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.

(c) The office of member of the Soil and Water Conservation Commission may be held concurrently with any other elected or appointed office, as authorized by G.S. 128-1.1 and Article VI, Section 9, of the Constitution of North Carolina.

(d) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(e) 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.

(f) A majority of the Commission shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 35; 1977, c. 771, s. 4; 1989, c. 727, s. 218(136); 1997-443, s. 11A.119(a); 2002-176, s. 2.)

Effect of Amendments. — Session Laws 2002-176, s. 2, effective October 31, 2002, rewrote the section.

Part 9A. Well Contractors Certification Commission.

§ 143B-301.12. Membership of Commission.

(a) Appointments. — The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time

of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. — Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. — Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. — The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. — An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Removal. — The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.

(g) Compensation. — 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.

(h) Quorum. — A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(i) Services. — All clerical and other services required by the Commission shall be supplied by the Secretary. (1997-358, s. 1; 2002-165, s. 1.11.)

Effect of Amendments. — Session Laws 2002-165, s. 1.11, effective October 23, 2002, substituted "G.S. 143B-13" for "G.S. 143-13" in subsection (f).

Part 30. State Infrastructure Council.

§ 143B-344.32. Staff and offices.

The Department of Environment and Natural Resources shall provide office space and staff for the State Infrastructure Council as requested by the Council. Upon the request of a chair of the State Infrastructure Council who is also a member of the General Assembly, the Legislative Services Office shall also provide professional staff services to the Council. Upon the request of a chair of the State Infrastructure Council who is also a member of the General Assembly, the Council may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. (1998-132, s. 14; 2001-486, s. 2.24; 2001-487, s. 125.5; 2002-176, s. 6.)

Effect of Amendments. — Session Laws 2002-176, s. 6, effective October 31, 2002, added the last sentence; and made a minor punctuation change in the second sentence.

Article 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-345. Department of Transportation — creation.

Editor's Note. — Session Laws 2002-190, s. 1, as amended by Session Laws 2002-159, s. 31.5, provides: "All statutory authority, powers, duties, and functions, including rulemaking, budgeting, purchasing, records, personnel, personnel positions, salaries, property, and unexpended balances of appropriations, allocations, reserves, support costs, and other funds allocated to the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing are transferred to and vested in the Department of Crime Control and Public Safety. This transfer has all

the elements of a Type I transfer as defined in G.S. 143A-6.

"The Department of Crime Control and Public Safety shall be considered a continuation of the transferred portion of the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the purpose of succession to all rights, powers, duties, and obligations of the Enforcement Section and of those rights, powers, duties, and obligations exercised by the Department of Transportation, Division of Motor Vehicles on behalf of the Enforcement Section. Where the Department of Transportation, the Division of Motor Vehicles, or the Enforcement Section, or any combination thereof are referred to by law, contract, or other document, that reference shall apply to the Department of Crime Control and Public Safety.

"All equipment, supplies, personnel, or other properties rented or controlled by the Department of Transportation, Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing shall be administered by the Department of Crime Control and Public Safety."

Article 9.

Department of Administration.

Part 3. North Carolina Capital Planning Commission.

§ 143B-373. North Carolina Capital Planning Commission — creation; powers and duties.

Editor's Note. — Session Laws 2002-186, s. 1, provides: "The North Carolina Capital Planning Commission, in consultation with the State Property Office in the Department of Administration and the Department of Cultural Resources, shall examine the State-owned properties within the area bordered by North Person Street, Lane Street, North Wilmington Street, and Peace Street to determine whether any of the properties no longer have any use to the State or should for any other reason be disposed of by the State. The Commission shall report its findings and recommendations, including any recommended legislation, to the Joint Legislative Commission on Governmental Operations on or before January 15, 2003. This report shall include the following:

"(1) For each property within the specified area, a detailed explanation of the current use and recommendation for the future use of the property.

"(2) A description of each property recommended for disposal and an explanation as to why disposal of the property is appropriate.

"(3) A timetable for the disposal of any properties recommended for disposal.

"(4) Recommendations for the manner of disposal of any of the properties recommended for disposal with an explanation as to why a particular manner is recommended.

"(5) A detailed explanation of the cost to the State of disposing of any property, including the cost of relocating any State offices.

"(6) Recommendations for where any State offices in properties recommended for disposal should be relocated."

Part 10C. Domestic Violence Commission.

§ 143B-394.16. Powers and duties of the Commission; reports.

(a) Powers and Duties. — The Commission shall have the following powers and duties:

(1) As recommended in the January 15, 1999, final report of the Governor's Task Force on Domestic Violence, to develop and recommend to the General Assembly the "Safe Families Act" and to promote adequate funding to promote victim safety and accountability of perpetrators.

(2) To develop and recommend domestic violence training initiatives for law enforcement and judicial personnel and for all persons who provide treatment and services to domestic violence victims.
(3) To develop training initiatives for and make recommendations and provide information and advice to State agencies in the areas of child protection, education, employer/employee relations, criminal justice, and subsidized housing.
(4) To provide information and advice to any private entities that request assistance in providing services and support to domestic violence victims.
(5) To design, coordinate, and oversee a statewide public awareness campaign.
(6) To design and coordinate improved data collection efforts for domestic violence crimes and acts in the State.
(7) To research, develop, and recommend proposals of how best to meet the needs of domestic violence victims and to prevent domestic violence in the State.
(8) To adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes for the approval of abuser treatment programs as provided in G.S. 50B-3(a)(12). The Commission shall adopt rules to establish a consistent level of performance from providers of abuser treatment programs and to ensure that approved programs enhance the safety of victims and hold those who perpetrate acts of domestic violence responsible.

(b) Report. — The Commission shall report its findings and recommendations, including any legislative or administrative proposals, to the General Assembly no later than April 1 each year. (1999-237, s. 24.2(b); 2002-105, s. 1.)

Effect of Amendments. — Session Laws 2002-105, s. 1, effective September 6, 2002, added subdivision (a)(8).

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Health and Human Services, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment and Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Indians of Person County; the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Indians of Person County, one; the Cumberland County

Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native American Society, one. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon 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 shall be filled in accordance with G.S. 120-122.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. The initial appointment from the Indians of Person County shall expire on June 30, 1999. The initial appointment from the Triangle Native American Society shall expire June 30, 2003. The initial appointment of the Occaneechi Band of the Saponi Nation shall expire June 30, 2005. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1981, c. 47, s. 5; 1981 (Reg. Sess., 1982), c. 1191, ss. 74, 76; 1989, c. 727, s. 218(149); 1991, c. 467, s. 1; 1995, c. 490, s. 27; 1997-147, s. 2; 1997-293, s. 2; 1997-443, ss. 11A.118(a), 11A.119(a); 2001-318, s. 1; 2002-126, s. 19.1A(a).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 19.1A(b), provides: "Any expenses incurred under this section shall be paid by the Department of Administration out of existing appropriations."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 19.1A(a), effective November 1, 2002, in subsection (a), substituted "21 representatives" for "20 representatives" in the first sentence, added "the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties," in the second sentence, and added "the Occaneechi Band of the Saponi Nation, one," in the third sentence; and added the fourth sentence in subsection (b).

Part 29. Board of Trustees of the North Carolina Public Employee Special Pay Plan.

§ 143B-426.41. Board of Trustees of the North Carolina Public Employee Special Pay Plan.

(a) The Governor shall, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Special Pay Plan, which when established shall be constituted as an agency of the State of North Carolina within the Department of Administration. The Board shall adopt and implement an Internal Revenue Service approved Special Pay Plan for State employees, which shall enhance, and not diminish, existing Special Pay benefits. A Special Pay Plan is a qualified retirement plan under section 401(a) of the Internal Revenue Code, which is approved by the Internal Revenue Service, that reduces the federal tax burden on special compensation payments made on behalf of State employees which if paid directly to a State employee would be compensation income within the meaning of the Internal Revenue Code.

(b) The Board shall consist of seven voting members, as follows:

(1) The State Personnel Director.
(2) The State Budget Officer, who shall serve as chair.
(3) The State Treasurer.
(4) A State employee who has knowledge of benefits and benefit administration appointed by the Governor.
(5) An employee of a public school system administrative unit who is knowledgeable about payroll and benefit matters, appointed by the Governor.
(6) An employee of The University of North Carolina System who is knowledgeable about payroll and benefit matters, appointed by the Governor.
(7) An employee of the Community College System who is knowledgeable about payroll and benefit matters, appointed by the Governor.

Any member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present at that meeting. The initial term of the member appointed pursuant to subdivisions (4) and (5) of this subsection shall end July 1, 2004, and, thereafter, the member shall serve terms of four years. The initial term of the member appointed pursuant to subdivisions (6) and (7) of this subsection shall end July 1, 2006, and, thereafter, the member shall serve terms of four years.

(c) The Board may delegate the performance of its administrative duties as it deems appropriate, including coordination and administration of the Plan. Prior to contracting for such services, the Board shall seek written proposals.

(d) The Plan shall be limited to employees age 55 or older whose Special Pay totals five thousand dollars ($5,000) or more per year. The Board may designate appropriate investment vehicles, trust services, and administrative services from any company duly authorized to conduct business in this State. Prior to contracting for any such services, the Board shall seek written proposals. The Board may establish, alter, amend, and modify the Special Pay Plan, to the extent it deems necessary or desirable, for the purpose of facilitating the administration, investment, and maintenance of assets acquired by the investment of Special Pay Plan funds. The Board of Trustees, may, however, exclude any categories of compensation or set floors or ceilings in order to ameliorate any hardships or unintended consequences.

Prior to implementing a Special Pay Plan, the Board shall investigate participation options and weigh the advantages and disadvantages to both the State and State employees of various participation options available.

The Special Pay Plan approved by the Board shall include the following components:

(1) The Plan shall require permanent savings for all State employees participating in the Special Pay Plan of no less than the lesser of seven and sixty-five hundredths percent (7.65%) or the FICA percentage applicable to all Special Pay subject to the Plan.

(2) State employees who elect and are entitled to immediate distribution from the Plan shall be guaranteed payment of the entire amount of Special Pay, plus earnings, and less any mandatory income tax withholding in no more than seven days from the date payment is made to the Plan on behalf of the State employee.

(3) The Plan shall phase in participation in the Special Pay Plan by State agencies as directed by the Board.

(e) A majority of the Board shall constitute a quorum for the transaction of business. (2002-126, s. 28.6.)

Editor's Note. — Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-427. Department of Commerce — creation.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2002-126, s. 13.9, as amended by Session Laws 2002-159, s. 76(b), provides: "The Kenan-Flagler Business School ("Business School") of the University of North Carolina at Chapel Hill shall study the effectiveness of the economic development activities of the North Carolina Department of Commerce ("Commerce") and the Regional Economic Development Commissions ("Commissions"). In conducting its study the Business School shall work with Commerce and the Commissions to do the following:

"(1) Identify how Commerce and the Commissions can improve communication, implement a more coordinated and efficient recruitment and retention effort throughout the State, and avoid duplication of effort,

"(2) Establish specific performance measures and outcomes relevant to the mission, goals, and objectives of Commerce and the Commissions,

"(3) Develop a "scorecard" that can be used to measure the extent to which Commerce and the Commissions have achieved their goals, objectives, and outcomes, and

"(4) Recommend a performance-based funding mechanism that will inform the General Assembly's decisions regarding appropriations to Commerce and the Commissions.

"The Business School also may include in its study and recommendations any other information it deems relevant to the study and its intent.

"The Business School shall report its findings and recommendations to the members of the General Assembly and to the Fiscal Research Division by March 15, 2003."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 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 with expenditures in this State of at least one million dollars ($1,000,000). 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; 2002-172, s. 3.1.)

Editor's Note. —

Session Laws 2002-172, s. 3.2, provides: "The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study options for additional economic incentives for the film industry and shall make a report to the 2003 General Assembly on its findings, including any recommendations for legislative action."

Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-172, s. 3.1, effective October 31, 2002, added "with expenditures in this State of at least one million dollars ($1,000,000)" at the end of the first sentence of subdivision (a)(1).

§ 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, 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, telecommunications, high-speed broadband, 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, telecommunications, high-speed broadband, 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, two, and three 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, telecommunications, high-speed broadband, 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, telecommunications, high-speed broadband, 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); 2002-172, ss. 2.2(a), (b).)

Editor's Note. —

Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-172, s. 2.2(a) and (b), effective October 31, 2002, inserted "telecommunications, high-speed broadband" twice in subdivision (a)(1); and in subsection (b1), substituted "tier one, two, and three areas" for "tier one and tier two areas" and inserted "telecommunications, high-speed broadband" twice.

§ 143B-437.06. Regional economic development vision plans.

The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community

college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

The policy shall direct each task force to develop a five-year vision plan for its economic development region. At aminimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed. (2002-126, s. 8.3.)

Editor's Note. — Session Laws 2002-126, s. 8.3, effective July 1, 2002, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severablity clause.

Session Laws 2002-126, s. 31.7, makes this section effective July 1, 2002.

Part 2E. North Carolina Rural Internet Access Authority

(Repealed effective December 1, 2003).

§ 143B-437.43. (Repealed effective December 1, 2003) Powers, duties, and goals of the Authority.

OPINIONS OF ATTORNEY GENERAL

Commission Has Authority to Make Award to For-Profit Organization. — The Rural Internet Access Authority Commission has the authority to award a telecenter grant to a for-profit organization if it determines such an organization meets the criteria for the grant. See opinion of Attorney General to Dr. James Leutze, Chair, Rural Internet Access Authority, 2001 N.C. AG LEXIS 17 (5/29/2001).

Part 2F. Job Development Investment Grant Program.

§ 143B-437.50. Legislative findings and purpose.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Part that are designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Part is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina; and this Part will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.

(6) It is not the intent of the General Assembly that grants provided through this Part be used as venture capital funds, business incubator funds, or business start-up funds or to otherwise fund the initial capitalization needs of new businesses.

(7) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2002-172, s. 2.1(a).)

Cross References. — For considerations when developing criteria for awarding grants and determining percentages upon which amounts of grants are based, see editor's notes under G.S. 143B-437.52.

Editor's Note. — This Part was enacted by Session Laws 2002-172, s. 2.1(a), as G.S. 143B-437.44 through 143B-437.56. It has been renumbered as G.S. 143B-437.50 through 143B-437.62, respectively, at the direction of the Revisor of Statutes.

Session Laws 2002-172, s. 2.7, provides: "The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study the use, the effectiveness, and the cost versus benefits of the Job Development Investment Grant Program created in this act [Session Laws 2002-172], the Bill Lee Act credits in Chapter 105 of the General Statutes, and the Industrial Recruitment Competitive Fund. The Study Committee may report the results of its study and any recommendations to the 2004 Regular Session of the 2003 General Assembly and shall make a final report by March 15, 2005, to the 2005 General Assembly."

Session Laws 2002-172, s. 7.1, contains a severability clause.

Session Laws 2002-172, s. 7.2, makes this Part effective October 31, 2002.

§ 143B-437.51. Definitions.

The following definitions apply in this Part:

(1) Agreement. — A community economic development agreement under G.S. 143B-437.57.

(2) Base years. — The first two complete calendar years following the effective date of an agreement.

(3) Business. — A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit

corporation, or other form of business organization, located either within or outside this State.

(4) Committee. — The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. — A position created by a business and filled by a new full-time employee in this State during the base years or in subsequent years of a grant.

(6) Full-time employee. — A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. — A full-time employee who represents a net increase in the number of the business's employees statewide. The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.

(8) Overdue tax debt. — Defined in G.S. 105-243.1.

(9) Related member. — Defined in G.S. 105-130.7A.

(10) Withholdings. — The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes. (2002-172, s. 2.1(a).)

§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. — There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. — The maximum number of agreements the Committee may enter into each calendar year is 15.

(c) Ceiling. — The maximum amount of total annual liability for grants for agreements entered into in any single calendar year may not exceed ten million dollars ($10,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount. (2002-172, s. 2.1(a).)

Editor's Note. — Session Laws 2002-172, s. 2.1(b), provides: "In developing criteria under G.S. 143B-437.46 [now G.S. 143B-437.52] for the awarding of grants under Part 2F of Article 10 of Chapter 143B of the General Statutes and under G.S. 143B-437.50 [now G.S. 143B-437.56] for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee, in consultation with the Attorney General, may consider criteria that address the following:

"(1) Factors related to the economic impact of the project, such as the following:

"a. Impact on gross regional product and gross State product.

"b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.

"c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.

"d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.

"e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.

"f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.

"g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.

"h. The economic demands the project is expected to place upon the community or communities in which it will locate.

"i. The number of eligible positions that would be filled by residents of development zones.

"(2) Factors related to the strategic importance of the project to the State, region, or locality, such as the following:

"a. The extent to which the project builds or enhances an industrial cluster.

"b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.

"c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.

"d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.

"e. The extent to which the project can be expected to contribute significantly to and support the local community.

"(3) Factors related to the quality of jobs, such as the following:

"a. The wage level and status of the jobs to be created.

"b. The quality and value of benefits offered by the company.

"c. The potential for employee advancement.

"d. The extent of training programs offered by the company.

"e. The sustainability of the jobs in the future.

"f. The workplace safety record of the company.

"(4) Factors related to the quality of the industry and the project, such as the following:

"a. The nature of the project and the project's relationship to the larger business of the company.

"b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.

"c. The long-term prospects for growth at the project site or sites.

"d. The long-term prospects for growth of the company and the industry within the United States.

"e. The financial stability of the company associated with the project.

"(5) Factors related to the environmental impact of the project, such as the following:

"a. The nature of the business to be conducted.

"b. The ability of the project to satisfy State, federal, and local environmental law and regulations.

"(6) The degree to which use of the program has been geographically dispersed among the various regions of the State and between rural and urban areas.

"(7) Other factors that the Economic Investment Committee considers relevant that are not inconsistent with this section and that the Committee determines will further the purposes of Part 2F of Article 10 of Chapter 143B of the General Statutes."

§ 143B-437.53. Eligible projects.

(a) Minimum Number of Eligible Positions. — A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

Enterprise Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	10
Tier Three	10
Tier Four	20
Tier Five	20

(b) Ineligible Businesses. — A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or club is not eligible for a grant under this Part.

(c) Health Insurance. — A business is eligible for a grant under this Part only if the business provides health insurance for all of the full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, a business 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 business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance for all full-time employees of the project with respect to which the grant is made. If the business ceases to provide health insurance to all full-time employees of the project with respect to which a grant is made, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59.

(d) Wage Standard. — In order for a business to be eligible for a grant under this Part, the average wage of all jobs at the location with respect to which a grant is made must meet the wage standard set out in G.S. 105-129.4(b). If a project is to be located at more than one location, the average wage of all jobs at a location must meet the wage standard set out in G.S. 105-129.4(b) in order for that location to be included in the agreement.

(e) Safety and Health Programs. — In order for a business to be eligible for a grant under this Part, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127. (2002-172, s. 2.1(a).)

§ 143B-437.54. Economic Investment Committee established.

(a) Membership. — The Economic Investment Committee is established. The Committee consists of the following members:

(1) The Secretary of Commerce.
(2) The Secretary of Revenue.
(3) The Director of the Office of State Budget and Management.
(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
(5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The members of the Committee appointed by the General Assembly may not be members of the General Assembly. The members of the Committee appointed by the General Assembly serve two-year terms that begin upon appointment.

(b) Decision Required. — The Committee may act only upon a decision of three of its five members.

(c) Conflict of Interest. — It is unlawful for a former member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part while the former member was serving on the Committee. Violation of this subsection is a Class 1 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to what compensation was received by the defendant for services in violation of this section and shall order the defendant to forfeit that compensation.

If a person is convicted under this section, the person shall not provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part while the former member was serving on the Committee until two years after the person's conviction under this section.

(d) Public Notice. — The Committee shall do all of the following at least 15 business days prior to the adoption of or amendment to any proposed criteria:

(1) Publish the proposed criteria on the Department of Commerce's web site.
(2) Provide notice to persons who have requested notice of proposed criteria.
(3) Accept oral and written comments on the proposed criteria.

(e) Sunshine. — Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information. (2002-172, s. 2.1(a).)

§ 143B-437.55. Applications; fees; reports; study.

(a) Application. — A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created during the base years and thereafter and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to all full-time employees of the project.
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. — When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. — The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the

Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding calendar year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars ($5,000).

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.

(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.

(d) Quarterly Reports. — The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. — The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year. (2002-172, s. 2.1(a).)

§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount

of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.
(2) The expected duration of those positions.
(3) The type of contribution the business can make to the long-term growth of the State's economy.
(4) The amount of other financial assistance the project will receive from the State or local governments.
(5) The total dollar investment the business is making in the project.
(6) Whether the project utilizes existing infrastructure and resources in the community.
(7) Whether the project is located in a development zone.
(8) The number of eligible positions that would be filled by residents of a development zone.
(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant is made.

(c) The grant may be based only on eligible positions created during the base years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an enterprise tier four or five area.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible position may not exceed six thousand five hundred dollars ($6,500) in any year. (2002-172, s. 2.1(a).)

Cross References. — For considerations when developing criteria for awarding grants and determining percentages upon which amounts of grants are based, see editor's notes under G.S. 143B-437.52.

§ 143B-437.57. Community economic development agreement.

(a) Terms. — Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.
(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
(4) The amount of the grant based on a percentage of withholdings.
(5) A method for determining the number of new employees hired during a grant year.
(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.
(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.
(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.
(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.
(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.
(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.
(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.
(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.
(17) A provision encouraging the business to hire North Carolina residents.
(18) A provision encouraging the business to use the North Carolina State Ports.
(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.
(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).
(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible position may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(b) Approval of Attorney General. — The Attorney General shall review the terms of all proposed agreements entered into by the Committee. To be effective against the State, an agreement entered into under this Part must be signed personally by the Attorney General. (2002-172, s. 2.1(a).)

§ 143B-437.58. Grant recipient to submit records.

(a) No later than February 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a copy of its State and federal tax returns showing business and nonbusiness income and a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time. (2002-172, s. 2.1(a).)

§ 143B-437.59. Failure to comply with agreement.

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant. (2002-172, s. 2.1(a).)

§ 143B-437.60. Disbursement of grant.

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified to the State Controller that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall further certify to the State Controller the amount of a grant for which the business is eligible under the agreement and the amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The State Controller shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee. (2002-172, s. 2.1(a).)

§ 143B-437.61. Transfer to Industrial Development Fund.

At the time the State Controller remits a check to a business under G.S. 143B-437.60, the State Controller shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d). (2002-172, s. 2.1(a).)

§ 143B-437.62. Authority.

The authority of the Committee to enter into new agreements begins January 1, 2003, and expires January 1, 2005. (2002-172, s. 2.1(a).)

Part 10. North Carolina State Ports Authority.

§ 143B-454. Powers of Authority.

(a) In order to enable it to carry out the purposes of this Part, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

(4) **(See Editor's Note)** Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers,

G.S. 143B-454(a)(4) is set out twice. See notes.

quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, excluding terminal railroads;

(4) **(See Editor's Note)** Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, and to acquire, construct, and maintain, but not operate, such rail facilities as may be necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers;

(5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected;

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such

evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.

(12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon.

Prior to taking any action under this subsection, the Authority may consult with the Advisory Budget Commission.

(b) In order to execute the powers enumerated in subsection (a), the Authority shall determine the policies of the North Carolina State Ports Authority by majority vote of all members of the Authority present and voting. Once a policy is determined, the Authority shall communicate it to the Executive Director, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority shall have responsibility or authority to give operational directives to any employee of the North Carolina State Ports Authority other than the Executive Director. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5; 1975, c. 716, s. 2; 1977, c. 65, s. 2; c. 198, ss. 7, 9; c. 802, s. 50.45; 1979, c. 159, s. 3; 1981 (Reg. Sess., 1982), c. 1181, s. 2; 1983, c. 717, s. 84; 1985, c. 479, s. 219; 1985 (Reg. Sess., 1986), c. 955, ss. 102, 103; 1987, c. 275, ss. 1, 2; 1989, c. 273, s. 1; 2002-99, s. 7(a); 2002-126, s. 6.6(c).)

Subdivision (a)(4) Set Out Twice. — The first version of subdivision (a)(4) is effective until a contingent amendment described in the Editor's note, below. The second version of subdivision (a)(4) is effective at that time. See Editor's note.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 6.6(d), provides: "Within 30 days of the date this section becomes law, the North Carolina Ports Railway Commission shall provide the North Carolina State Ports Authority with a complete list of its assets and liabilities. All of the assets, real and personal, tangible and intangible, and all of the

liabilities, including contractual obligations, of the North Carolina Ports Railway Commission are transferred to the North Carolina State Ports Authority. If and to the extent that such transfers require the execution of any documents or instruments of transfer by the North Carolina Ports Railway Commission, those documents may be executed by the current officers and members of the Commission and shall be executed within 60 days of the date this section becomes law."

Session Laws 2002-126, s. 6.6(e), provides: "As part of a plan to reorganize and consolidate rail operations at the State Ports, the North Carolina State Ports Authority may sell or transfer the Beaufort and Morehead Railway, Inc., or any part thereof or interest therein, to a terminal switching or short line railroad company, or to the North Carolina Railroad Company, on such terms and conditions as the parties may agree to."

Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an Advisory Opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (website at http://www.jus.state.nc.us/lrframe.htm).

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 6.6(c), effective July 1, 2002, substituted "and to acquire, construct, and maintain, but not operate, such rail facilities as may be necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers" for "excluding terminal railroads" at the end of subdivision (a)(4).

Session Laws 2002-99, s. 7.(a), effective August 29, 2002, added the last three sentences in subdivision (a)(11).

Part 11. North Carolina Ports Railway Commission.

§ 143B-469. (For contingent repeal see editor's note) Creation of Commission.

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 6.6(d), provides: "Within 30 days of the date this section becomes law, the North Carolina Ports Railway Commission shall provide the North Carolina State Ports Authority with a complete list of its assets and liabilities. All of the assets, real and personal, tangible and intangible, and all of the liabilities, including contractual obligations, of the North Carolina Ports Railway Commission are transferred to the North Carolina State Ports Authority. If and to the extent that such transfers require the execution of any documents or instruments of transfer by the North Carolina Ports Railway Commission, those documents may be executed by the current officers and members of the Commission and shall be executed within 60 days of the date this section becomes law."

Session Laws 2002-126, s. 6.6(e), provides: "As part of a plan to reorganize and consolidate

rail operations at the State Ports, the North Carolina State Ports Authority may sell or transfer the Beaufort and Morehead Railway, Inc., or any part thereof or interest therein, to a terminal switching or short line railroad company, or to the North Carolina Railroad Company, on such terms and conditions as the parties may agree to."

Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an Advisory Opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (website at http://www.jus.state.nc.us/lrframe.htm).

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143B-469.1. (For contingent repeal see editor's note) Powers of Commission.

The Commission shall be an agency of the State with all the powers of a body corporate including the following:

(1) To sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) To rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of all such property, real or personal, as the Commission may deem necessary;

(3) To operate, maintain and control all railway equipment and railway operations transferred to it by the State Ports Authority;

(4) To acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports terminal railroads in addition to those transferred to it by the State Ports Authority with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry goods, wares and merchandise over, along or upon the track of such railway or other conveyance;

(5) To make agreements as to scale of wages, seniority and working conditions with railroad employees, including but not limited to, locomotive engineers, locomotive firemen, switchmen, switch engine foremen and hostlers engaged in the operation and servicing of the terminal railways and their equipment;

(6) To connect with or cross any other railway upon payment of just compensation and to receive, deliver to and transport the freight,

passengers and the cars of common carrier railroads as though it were an ordinary common carrier;

(7) To appoint, with the approval of the Governor, a general manager of the Commission who shall serve at the pleasure of the board. The salary for the general manager shall be fixed by the General Assembly in the Current Operations Appropriations Act. The general manager shall have the authority to appoint, employ and dismiss such number of employees as may be deemed necessary by the board to accomplish the purposes of this Article. The compensation of such employees shall be fixed by the board;

(8) To establish an office for the transaction of its business at such place or places, as in the opinion of the Commission, shall be advisable or necessary in carrying out the purposes of this Part;

(9) To pay all necessary costs and expenses involved in and incident to the formation and organization of the Commission, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(10) To apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the State, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing powers of the State, or any political subdivision thereof;

(11) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any manner coming within the purposes or powers of the Commission;

(12) To acquire rights-of-way and the property necessary for the construction of administration buildings, equipment, servicing facilities, terminal railways and structures, railway crossings, bridges and causeways by purchase, by negotiation or by condemnation, and should the Commission elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Commission, and it may proceed in any manner provided for by the general laws of this State;

(13) To do any and all things necessary to carry out and accomplish the purposes of this Article. (1979, c. 159, s. 1; 1983, c. 717, s. 85; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. — Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to

status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an Advisory Opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (website at http://www.jus.state.nc.us/lrframe.htm).

§ 143B-469.2. (For contingent repeal see editor's note) Cooperation with Ports Authority.

It shall be the duty and responsibility of the Commission to cooperate with the North Carolina State Ports Authority to insure that the State ports shall operate efficiently and effectively and to insure the orderly and effective development of the State ports. (1979, c. 159, s. 1.)

Editor's Note. — Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an Advisory Opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (website at http://www.jus.state.nc.us/lrframe.htm).

§ 143B-469.3. (For contingent repeal see editor's note) Commission not required to be a common carrier.

None of the powers and duties of the Commission shall be construed as requiring it to become a carrier subject to the Interstate Commerce Act. (1979, c. 159, s. 1.)

Editor's Note. — Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an Advisory Opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the

Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (website at http://www.jus.state.nc.us/lrframe.htm).

Part 19. Small Business Contractor Act. (This Part expires June 30, 2006).

§ 143B-472.85. (Expires June 30, 2006) Purpose and intent.

The purpose and intent of this Part is to foster economic development and the creation of jobs by providing financial assistance to financially responsible small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. (2002-181, s. 1.)

Editor's Note. — This part was enacted by Session Laws 2002-181, s. 1, as Part 18 of Article 10, G.S. 143B-472.75 through 143B-472.87. It has been renumbered as Part 19, G.S. 143B-472.85 through 143B-472.97, respectively, at the direction of the Revisor of Statutes.

Session Laws 2002-181, s. 2(a), makes this Part effective January 1, 2003, and applicable to offenses committed or causes of action arising on or after that date.

Session Laws 2002-181, which enacted this Part, provides in s. 2(b): "This act expires June 30, 2006. The expiration of this act does not affect prosecutions for offenses committed before that date, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The expiration of this act does not affect any guarantees or bonds executed prior to the expiration."

§ 143B-472.86. (Expires June 30, 2006) Definitions.

The following definitions apply in this Part:

(1) Authority. — The North Carolina Small Business Contractor Authority created in this Part.

(2) Contract term. — The term of a contract, including the maintenance or warranty period required by the contract and the period during which the surety may be liable for latent defects.

(3) Government agency. — The federal government, the State, an agency, or a political subdivision of the federal government or the State, or a utility regulated by the North Carolina Utilities Commission.

(4) Internal Revenue Code. — The Code as defined in G.S. 105-228.90.

(5) Related party. — A party related to the applicant in a manner that would require an attribution of stock to or from the party under section 318 of the Internal Revenue Code.

(6) Secretary. — The Secretary of Commerce. (2002-181, s. 1.)

Editor's Note. — Some of the definitions above were renumbered at the direction of the Revisor of Statutes.

§ 143B-472.87. (Expires June 30, 2006) Authority creation; powers.

(a) Creation. — The North Carolina Small Business Contractor Authority is created within the Department of Commerce.

(b) Membership. — The Authority consists of 11 members appointed as follows:

(1) Four members appointed by the General Assembly upon the recom-

mendation of the President Pro Tempore of the Senate, one of whom has experience in underwriting surety bonds.

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom is a present or former governmental employee with experience in administering public contracts.

(3) Three members appointed by the Governor, one of whom is a licensed general contractor and one of whom is experienced in working for private, nonprofit, small, or underutilized businesses.

(c) Terms. — Members serve four-year terms, except initial appointments. There is no prohibition against reappointment for subsequent terms. Initial appointments shall begin on January 1, 2003. Each appointing authority shall designate two of its initial appointments to serve four-year terms and the remainder of its initial appointments to serve three-year terms.

(d) Chair. — The chair shall be elected annually by the members of the Authority from the membership of the Authority and shall be a voting member.

(e) Compensation. — The Authority members shall receive no salary as a result of serving on the Authority but are entitled to per diem and allowances in accordance with G.S. 138-5.

(f) Meetings. — The Secretary shall convene the first meeting of the Authority within 60 days after January 1, 2003. Meetings shall be held as necessary as determined by the Authority.

(g) Quorum. — A majority of the members of the Authority constitutes a quorum for the transaction of business. A vacancy in the membership of the Authority does not impair the right of the quorum to exercise all rights and to perform all duties of the Authority.

(h) Vacancies. — A vacancy on the Authority resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made, 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.

(i) Removal. — Members may be removed in accordance with G.S. 143B-13. A member who misses three consecutive meetings of the Authority may be removed for nonfeasance.

(j) Powers and Duties. — The Authority has the following powers and duties:

(1) To accept grants, loans, contributions, and services.

(2) To employ staff, procure supplies, services, and property, and enter into contracts, leases, or other legal agreements, including the procurement of reinsurance, to carry out the purposes of the Authority.

(3) To acquire, manage, operate, dispose of, or otherwise deal with property, take assignments of rentals and leases, and enter into contracts, leases, agreements, and arrangements that are necessary or incidental to the performance of the duties of the Authority, upon terms and conditions that it considers appropriate.

(4) To specify the form and content of applications, guaranty agreements, or agreements necessary to fulfill the purposes of this Part.

(5) To acquire or take assignments of documents executed, obtained, or delivered in connection with assistance provided by the Authority under this Part.

(6) To fix, determine, charge, and collect any premiums, fees, charges, costs, and expenses in connection with any assistance provided by the Authority under this Part.

(7) To adopt rules, in accordance with Chapter 150B of the General Statutes, to implement this Part.

(8) To take any other action necessary to carry out its purposes.
(9) To report quarterly to the Joint Legislative Commission on Governmental Operations on the activities of the Authority, including the amount of rates, sureties, and bonds.

(k) Limitations. — Notwithstanding any other provision of this Part, the Authority may not provide financial assistance that constitutes raising money on the credit of the State or pledging the faith and credit or the taxing power of the State directly or indirectly for the payment of any debt. Before providing financial assistance to an applicant under this Part, the Authority must obtain the written certification of the Attorney General that the proposed financial assistance does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in Section 3(2) of Article V of the North Carolina Constitution. (2002-181, s. 1.)

§ 143B-472.88. (Expires June 30, 2006) Eligibility.

To qualify for assistance under this Part, an applicant must meet all of the following requirements:

(1) The applicant must be a small business concern that meets the applicable size standards established by the United States Small Business Administration for business loans based on the industry in which the concern, including its affiliates, is primarily engaged and based on the industry in which the concern, not including its affiliates, is primarily engaged. In addition, in the case of an application for bonding assistance, the applicant, including its affiliates, may not have receipts for construction and service contracts in excess of the maximum amount established by the United States Small Business Administration for surety bond guarantee assistance.
(2) The applicant must be an individual, or be controlled by one or more individuals, with a reputation for financial responsibility, as determined from creditors, employers, and other individuals with personal knowledge. If the applicant is other than a sole proprietorship, at least seventy percent (70%) of the business must be owned by individuals with a reputation for financial responsibility.
(3) The applicant must be a resident of this State or be incorporated in this State and must have its principal place of business in this State.
(4) The applicant must demonstrate to the satisfaction of the Authority that it has been unable to obtain adequate financing or bonding on reasonable terms through an authorized company. If the applicant is applying for a guarantee of a loan, the applicant must have applied for and been denied a loan by a financial institution. (2002-181, s. 1.)

§ 143B-472.89. (Expires June 30, 2006) Small Business Contract Financing Fund.

(a) Creation and Use. — The Small Business Contract Financing Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund to make direct loans and guaranty payments required by defaults and to pay the portion of the administrative expenses of the Authority related to making these loans and payments.

(b) Content. — The Small Business Contract Financing Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Repayments of principal of and interest on direct loans.
(3) Premiums, fees, and any other amounts received by the Authority with respect to financial assistance provided by the Authority.
(4) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.
(5) Investment income of the Fund.
(6) Any other moneys made available to the Fund. (2002-181, s. 1.)

§ 143B-472.90. (Expires June 30, 2006) Contract performance assistance authorized.

(a) Type. — The Authority is authorized to provide the following contract performance assistance:
(1) A guarantee of a loan made to the applicant.
(2) If the applicant demonstrates to the satisfaction of the Authority that it is unable to obtain money from any other source, a loan to the applicant.

(b) Qualification. — The Authority shall not lend money to an applicant or guarantee a loan unless all of the following requirements are met:
(1) The applicant meets the requirements of G.S. 143B-472.88.
(2) The loan is to be used to perform an identified contract, of which the majority of funding is provided by a government agency or a combination of government agencies.
(3) The loan is to be used for working capital or equipment needed to perform the contract, the cost of which can be repaid from contract proceeds, if the Authority has entered into an agreement with the applicant necessary to secure the loan or guaranty.

(c) Terms and Conditions. — The Authority shall set the terms and conditions for loans and for the guarantee of loans. When the Authority lends money from the Small Business Contract Financing Fund, it shall prepare loan documents that include all of the following:
(1) The rate of interest on the loan, which shall not exceed any applicable statutory limit for a loan of the same type.
(2) A payment schedule that provides money to the applicant in the amounts and at the times that the applicant needs the money to perform the contract for which the loan is made.
(3) A requirement that, before each advance of money is released to the applicant, the applicant and the Authority must co-sign the request for the money.
(4) Provisions for repayment of the loan.
(5) Any other provision the Authority considers necessary to secure the loan, including an assignment of, or a lien on, payment under the contract, if allowable.

(d) Maturity. — A loan made by the Authority shall mature not later than the date the applicant is to receive full payment under the identified contract, unless the Authority determines that a later maturity date is required to fulfill the purposes of this Part.

(e) Diversity. — In selecting applicants for assistance, the Authority must consider the need to serve all geographic and political areas and subdivisions of the State.

(f) Limitation. — The total amount of loan guarantees and loans issued to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year. (2002-181, s. 1.)

§ 143B-472.91. (Expires June 30, 2006) Small Business Surety Bond Fund.

(a) Creation and Use. — The Small Business Surety Bond Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund for the purposes of and to pay the expenses of the Authority related to providing bonding assistance.

(b) Content. — The Small Business Surety Bond Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Premiums, fees, and any other amounts received by the Authority with respect to bonding assistance provided by the Authority.

(3) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.

(4) Investment income of the Fund.

(5) Any other moneys made available to the Fund. (2002-181, s. 1.)

§ 143B-472.92. (Expires June 30, 2006) Bonding assistance authorized.

(a) Guaranty. — Subject to the restrictions of this Part, the Authority, on application, may guarantee a surety for losses incurred under a bid bond, payment bond, or performance bond on an applicant's contract, of which the majority of the funding is provided by a government agency or a combination of government agencies, up to ninety percent (90%) of the surety's losses, or nine hundred thousand dollars ($900,000), whichever is less. The term of a guaranty under this section shall not exceed the contract term. The Authority may vary the terms and conditions of the guaranty from surety to surety, based on the Authority's history of experience with the surety and other factors that the Authority considers relevant.

(b) Notice. — When the Authority provides a guaranty under this section with respect to a contract, it must give the government agencies that are parties to the contract written notice of the guaranty.

(c) Bonds. — The Authority may execute and perform bid bonds, performance bonds, and payment bonds as a surety for the benefit of an applicant in connection with a contract, of which the majority of the funding is provided by a government agency or a combination of government agencies.

(d) Obligation of State. — The total amount of guarantees issued and bonds executed shall not exceed ninety percent (90%) of the amount of money in the Small Business Surety Bond Fund. The Authority shall not pledge any money other than money in the Fund for payment of a loss or bond. No action by the Authority constitutes the creation of a debt secured by a pledge of the taxing power or the faith and credit of the State or any of its political subdivisions. The face of each guarantee issued or bond executed shall contain a statement that the Authority is obligated to pay the guarantee or bond only from the revenue in the Small Business Surety Bond Fund and that neither the taxing power nor the faith and credit of the State or any of its political subdivisions is pledged in payment of the guarantee or bond. Nothing in this subsection limits the ability of the Authority to obtain reinsurance.

(e) Limitation. — The total amount of bonding assistance provided to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year.

(f) Payment. — If the Authority considers it prudent, it may require that payment be made either to the contractor and lending institution or to the bonding authority. (2002-181, s. 1.)

§ 143B-472.93. (Expires June 30, 2006) Bonding assistance conditions.

(a) Requirements. — To obtain bonding assistance under this Part, an applicant must meet the eligibility requirements of G.S. 143B-472.88 and must demonstrate to the satisfaction of the Authority that all of the following apply:

(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor.

(2) A bond is not obtainable on reasonable terms and conditions without assistance under this Part.

(3) The applicant will not subcontract more than seventy-five percent (75%) of the face value of the contract.

(b) Default. — If an applicant or a person that is a related party with respect to the applicant has ever defaulted on a bond or guaranty provided by the Authority, the Authority may approve a guaranty or bond under this Part only if one of the following applies:

(1) Five years have elapsed since the time of the default.

(2) Every default by the applicant or related party in any program administered by the Authority has been cured.

(c) Economic Effect. — Before issuing a guaranty or bond, the Authority must determine that the contract for which a bond is sought to be guaranteed or issued has a substantial economic effect. To determine the economic effect of a contract, the Authority must consider all of the following:

(1) The amount of the guaranty obligation.

(2) The terms of the bond to be guaranteed.

(3) The number of new jobs that will be created by the contract to be bonded.

(4) Any other factor that the Authority considers relevant. (2002-181, s. 1.)

§ 143B-472.94. (Expires June 30, 2006) Surety bonding line.

The Authority may, on application, establish a surety bonding line in order to issue or guarantee multiple bonds to an applicant within preapproved terms, conditions, and limitations. (2002-181, s. 1.)

§ 143B-472.95. (Expires June 30, 2006) Application.

To apply for assistance from the Authority under this Part, an applicant and, where applicable, a surety must submit to the Authority an application on a form prescribed by the Authority. The application must include any information and documentation the Authority considers necessary to enable the Authority to evaluate the application in accordance with this Part. The Authority may require an applicant to provide an audited balance sheet unless the Authority determines that such a requirement is not necessary or appropriate to fulfill the purposes of this Part. (2002-181, s. 1.)

§ 143B-472.96. (Expires June 30, 2006) Premiums and fees.

(a) Amount. — The Authority shall by rule set the premiums and fees to be paid for providing assistance under this Part. The premiums and fees set by the Authority shall be payable in the amounts, at the time, and in the manner that the Authority requires. The premiums and fees may vary in amount among transactions and at different stages during the terms of transactions.

(b) Rate Standards. — The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use

the forms and rates of rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority under this section must be approved by the Commissioner of Insurance before they may be used.

(c) Forms. — The Authority shall develop forms to be used for financing and bonding assistance. (2002-181, s. 1.)

§ 143B-472.97. (Expires June 30, 2006) False statements; penalty.

(a) Documents. — It is unlawful to knowingly make or cause any false statement or report to be made in any application or in any document submitted to the Authority.

(b) Statements. — It is unlawful to make or cause any false statement or report to be made to the Authority for the purpose of influencing the action of the Authority on an application for assistance or affecting assistance, whether or not assistance has been previously extended.

(c) Penalty. — A violation of this section is a Class 2 misdemeanor. (2002-181, s. 1.)

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 2002-190, s. 1, as amended by Session Laws 2002-159, s. 31.5(b), provides: "All statutory authority, powers, duties, and functions, including rulemaking, budgeting, purchasing, records, personnel, personnel positions, salaries, property, and unexpended balances of appropriations, allocations, reserves, support costs, and other funds allocated to the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing are transferred to and vested in the Department of Crime Control and Public Safety. This transfer has all the elements of a Type I transfer as defined in G.S. 143A-6.

"The Department of Crime Control and Public Safety shall be considered a continuation of the transferred portion of the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the purpose of succession to all rights, powers, duties, and obligations of the Enforcement Section and of those rights, powers, duties, and obligations exercised by the Department of Transportation, Division of Motor Vehicles on behalf of the Enforcement Section. Where the Department of Transportation, the Division of Motor Vehicles, or the Enforcement Section, or any combination thereof are referred to by law, contract, or other document, that reference shall apply to the Department of Crime Control and Public Safety.

"All equipment, supplies, personnel, or other properties rented or controlled by the Department of Transportation, Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing shall be administered by the Department of Crime Control and Public Safety."

§ 143B-475. Department of Crime Control and Public Safety — functions.

(a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

(1) The National Guard, Department of Military and Veterans Affairs;
(2) Civil Preparedness, Department of Military and Veterans Affairs;
(3) State Civil Air Patrol, Department of Military and Veterans Affairs;
(4) State Highway Patrol, Department of Transportation;
(5) State Board of Alcoholic Control Enforcement Division, Department of Commerce;
(6) Governor's Crime Commission, Department of Natural and Economic Resources;
(7) Crime Control Division, Department of Natural and Economic Resources;
(8) Criminal Justice Information System Board, Department of Natural and Economic Resources; and
(9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.
(10) The Commercial Vehicle, Oversize/Overweight, Motor Carrier Safety Regulation and Mobile Home and Manufactured Housing regulatory and enforcement functions of the Department of Transportation, Division of Motor Vehicles Enforcement Section.

(b) The Department shall perform such other functions as may be assigned by the Governor.

(c) All such functions, powers, duties and obligations heretofore vested in any existing agency in Article 5 of Chapter 143B of the General Statutes are hereby transferred to and vested in the Department of Crime Control and Public Safety, except as otherwise provided by the Executive Organization Act of 1973, as amended.

(d) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1034, s. 103.

(e) The Crime Victims Compensation Commission established by Chapter 15B is vested in the Department of Crime Control and Public Safety. The Commission shall be administered as provided in Chapter 15B. (1977, c. 70, s. 1; 1981, c. 929; 1983, c. 832, s. 3; 1983 (Reg. Sess., 1984), c. 1034, s. 103; 1989, c. 751, s. 7(42); 1991, c. 301, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 73; 2002-159, s. 31.5(b); 2002-190, s. 14.)

Cross References. — As to the transfer of certain powers and duties from the Department of Transportation Division of Motor Vehicles Enforcement Section to the Department of Crime Control and Public Safety, see the editors note at G.S. 143B-473.

Editor's Note. —

Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5(b), provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Effect of Amendments. — Session Laws 2002-190, s. 14, as amended by Session Laws 2002-159, s. 31.5(b), effective January 1, 2003, added subdivision (a)(10).

§ 143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters.

(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on

him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

(1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission;

(2) Making grants for use in pursuing the objectives of the Governor's Crime Commission;

(3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Crime Control and Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.

(4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its duties; and

(5) Administering the Assistance Program for Victims of Rape and Sex Offenses.

(b) The Secretary, through appropriate subunits of the department, shall, at the request of the Governor, provide assistance to State and local law-enforcement agencies, district attorneys, judges, and the Department of Correction, when called upon by them and so directed.

(c) In the event that the Governor, in the exercise of his constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

(d) Whenever the Secretary exercises the authority provided in subsection (c) of this section, he shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(e) Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(f) The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(g) Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution or elsewhere.

(h) Prior to any notification of proposed grant awards to State agencies for use in pursuing the objectives of the Governor's Crime Commission pursuant to subsection (a) of this section, the Secretary shall report to the Senate and

House Appropriations Committees for review of the proposed grant awards. (1977, c. 70, s. 1; 1979, 2nd Sess., c. 1310, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 17; 1985, c. 757, s. 164(c); 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1998-212, s. 19.5(a); 2002-159, s. 31.5(b); 2002-190, s. 15.)

Cross References. — As to the transfer of certain powers and duties from the Department of Transportation Division of Motor Vehicles Enforcement Section to the Department of Crime Control and Public Safety, see the editors note at G.S. 143B-473.

Editor's Note. — Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5(b), provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Effect of Amendments. — Session Laws 2002-190, s. 15, as amended by Session Laws 2002-159, s. 31.5(b), effective January 1, 2003, added the language beginning "and to implement" in subdivision (a)(3).

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

§ 143B-480.2. Victim assistance.

(a) Eligibility for Assistance. — Sexual assault victims or victims of attempted sexual assault are eligible for assistance under this Program if the sexual assault or the attempted sexual assault is reported to a law enforcement officer within five days of the occurrence of the assault or the attempted sexual assault and if a forensic medical examination is performed within five days of the sexual assault or the attempted sexual assault. The Secretary may waive either five-day requirement for good cause. The term "sexual assault" as used in this section refers to the following crimes: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or statutory rape as defined in G.S. 14-27.7A.

(b) Eligible Expenses. — Assistance is limited to the following expenses incurred by the victim:

(1) Immediate and short-term medical expenses.

(2) Ambulance services from the place of the attack to a place where medical treatment is provided.

(3) Mental health services provided by a professional licensed or certified by the State to provide such services.

(4) A forensic medical examination. As used in this section, the term "forensic medical examination" means an examination provided to a sexual assault victim eligible for assistance under subsection (a) of this section by medical medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence.

(5) Counseling treatment following the attack.

(c) Amount of Assistance. — The Program shall pay for the full out-of-pocket cost of the victim's forensic medical examination. The Program shall pay for all other eligible expenses set out in subsection (b) of this section in an amount not to exceed the difference between the full out-of-pocket cost of the forensic medical examination and one thousand dollars ($1,000). If the full out-of-pocket cost for the forensic medical examination costs more than one thousand dollars ($1,000), then the Program shall pay only for the full out-of-pocket cost of the forensic medical examination. Assistance not to exceed fifty dollars ($50.00) shall be provided to victims to replace clothing that was held for evidence tests.

(d) Payment Directly to Provider. — With the exception of assistance authorized under subsection (f) of this section, assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms. Payment for the full out-of-pocket cost of the forensic medical examination shall be paid to the provider no later than 90 days after receiving the required written notification of the victim's expense.

(e) Judicial Review. — Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(f) Examinations by Licensed Registered Nurse. — If the forensic medical examination is conducted by a licensed registered nurse who has successfully completed a program approved under G.S. 90-171.38(b), payment for the full out-of-pocket cost of the forensic medical examination may be made directly to the licensed registered nurse in lieu of any payment which may otherwise have been made under subsection (d) of this section. Payment for the full out-of-pocket costs of a forensic medical examination under this subsection shall be paid no later than 90 days after receiving the required written notification of the victim's expense. The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures. (1981, c. 931, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 16; 1983, c. 715, ss. 1, 2; 1997-375, s. 4; 1998-212, s. 19.4(n); 2002-126, s. 18.6(a); 2002-159, ss. 47, 78.)

Editor's Note. — This section was amended by Session Laws 2002-126, s. 18.6(a) in the coded bill drafting format provided by G.S. 120-20.1. Subdivision (b)(4) has been set out in the form above at the direction of the Revisor of Statutes. The extra word "medical" in the phrase "medical medical personnel" was part of the section as it existed prior to the 2002 amendment, but was omitted by S.L. 2002-126; consequently, it was not stricken through per code drafting guidelines.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 18.6(b), provides: "The Department of Crime Control and Public Safety may use funds available to the Department in order to implement the provisions of this section."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 18.6(a), as amended by Session Laws 2002-159, ss. 47 and 78, effective October 15, 2002, rewrote the section.

Part 5A. North Carolina Center for Missing Persons.

§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, or legal custodian, shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate

law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center of the relevant data about the missing child. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2002-126, s. 18.7(a).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 18.7(a), effective October 1, 2002, added the second paragraph.

§ 143B-499.2. Responsibilities of Center.

The Center shall:

(1) Assist local law-enforcement agencies with entering data about missing persons or missing children into the national missing persons file, ensure that proper entry criteria have been met as set forth by the FBI/NCIC, and confirm entry of the data about the missing persons or missing children;

(2) Gather and distribute information and data on missing children and missing persons;

(3) Encourage research and study of missing children and missing persons, including the prevention of child abduction and the prevention of the exploitation of missing children;

(4) Serve as a statewide resource center to assist local communities in programs and initiatives to prevent child abduction and the exploitation of missing children;

(5) Continue increasing public awareness of the reasons why children are missing and vulnerability of missing children;

(6) Achieve maximum cooperation with other agencies of the State, with agencies of other states and the federal government and with the National Center for Missing and Exploited Children in rendering assistance to missing children and missing persons and their parents, guardians, spouses, or legal custodians; and cooperate with interstate and federal efforts to identify deceased individuals;

(6a) Develop and maintain the North Carolina Child Alert Notification System (NC CAN) as created by G.S. 143B-499.7;

(7) Forward the appropriate information to the Police Information Network to assist it in maintaining and publishing a bulletin of currently missing children and missing persons;

(8) Maintain a directory of existing public and private agencies, groups, and individuals that provide effective assistance to families in the areas of prevention of child abduction, location of missing children and missing persons, and follow-up services to the child or person and family, as determined by the Secretary of Crime Control and Public Safety;

(9) Annually compile and publish reports on the actual number of children and persons missing each year, listing the categories and causes, when known, for the disappearances;

(10) Provide follow-up referrals for services to missing children or persons and their families;

(11) Maintain a toll-free 1-800 telephone service that will be in service at all times; and

(12) Perform such other activities that the Secretary of Crime Control and Public Safety considers necessary to carry out the intent of its mandate. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2002-126, s. 18.7(b).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 18.7(b), effective July 1, 2002, added subdivision (6a).

§ 143B-499.7. North Carolina Child Alert Notification System established.

(a) There is established within the North Carolina Center for Missing Persons the North Carolina Child Alert Notification System (NC CAN). The purpose of NC CAN is to provide a statewide system for the rapid dissemination of information regarding abducted children.

(b) The NC CAN System shall make every effort to disseminate information on missing children as quickly as possible when the following criteria are met:

(1) The child is 12 years of age or younger;
(2) The child is believed to have been abducted;
(3) The child is believed to be in danger of injury or death;
(4) The abduction is not known or suspected to be by a parent of the child;
(5) The child is not a runaway or voluntarily missing; and
(6) The abduction has been reported to and investigated by a law enforcement agency.

The NC CAN System may disseminate information on missing children who are ages 13 to 17 on a case-by-case basis, if all other criteria in subdivisions (2) through (6) of this subsection have been met, if the Center believes the dissemination of the information to be beneficial in the possible recovery of the missing child.

If the abduction of the child is known or suspected to be by a parent of the child, the Center, in its discretion, may disseminate information through the NC CAN System if the child is believed to be in danger of injury or death.

(c) The Center shall adopt guidelines and develop procedures for the statewide implementation of the NC CAN System and shall provide education and training to encourage radio and television broadcasters to participate in the System. The Center shall work with the Department of Justice in developing training material regarding the NC CAN System for law enforcement, broadcasters, and community interest groups.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section, when information is available that would enable motorists to assist law enforcement in the recovery of the missing child. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign.

(e) The Center shall consult with the Division of Emergency Management, in the Department of Crime Control and Public Safety, to develop a procedure for the use of the Emergency Alert System to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section.

(f) The Department of Crime Control and Public Safety, on behalf of the Center, may accept grants, contributions, devises, bequests, and gifts, which

shall be kept in a separate fund, which shall be nonreverting, and shall be used to fund the operations of the Center and the NC CAN System. (2002-126, s. 18.7(c).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Article 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 2. General Provisions.

§ 143B-520. Teen court programs.

(a) All teen court programs administered by the Department of Juvenile Justice and Delinquency Prevention shall operate as community resources for the diversion of juveniles pursuant to G.S. 7B-1706(c). A juvenile diverted to a teen court program shall be tried by a jury of other juveniles, and, if the jury finds the juvenile has committed the delinquent act, the jury may assign the juvenile to a rehabilitative measure or sanction, including counseling, restitution, curfews, and community service.

Teen court programs may also operate as resources to the local school administrative units to handle problems that develop at school but that have not been turned over to the juvenile authorities.

(b) Every teen court program that receives funds from Juvenile Crime Prevention Councils shall comply with rules and reporting requirements of the Department of Juvenile Justice and Delinquency Prevention. (2001-424, s. 24.8; 2002-126, s. 16.2(b).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 16.2(a), provides: "Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2002-2003 fiscal year, the sum of four hundred eighty-eight thousand six hundred sixty dollars ($488,660) shall be used to continue the operations of teen court programs which received direct State appropriations from the Department in the 2001-2002 fiscal year. For the 2002-2003 fiscal year, the Department shall allocate funds to the Juvenile Crime Prevention Councils in the counties in which those teen court programs are located. For each teen court program, the allocation shall be in an amount equal to the appropriation received by that program in the 2001-2002 fiscal year. The allocations authorized by this subsection are in addition to the formula allocations for the applicable counties."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 16.2(b), effective July 1, 2002, rewrote subsection (b).

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 2.

Dispositions.

§ 146-6. Title to land raised from navigable water.

Legal Periodicals. —
For article, "The Changing Face of the Shoreline: Public and Private Rights to the Natural and Nourished Dry Sand Beaches of North Carolina," see 78 N.C.L. Rev. 1869 (2000).

Chapter 147.

State Officers.

Article 3D.

Office of Information Technology Services.

Part 2. General Powers and Duties.

§ 147-33.82. Powers and duties of the State Chief Information Officer and 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 Manage-

ment 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.

(c) The State Chief Information Officer shall establish an enterprise-wide set of standards for information technology security to maximize the functionality, security, and interoperability of the State's distributed information technology assets, including communications and encryption technologies. As part of this function, the State Chief Information Officer shall review periodically existing security standards and practices in place among the various State agencies to determine whether those standards and practices meet enterprise-wide security and encryption requirements. The State Chief Information Officer may assume the direct responsibility of providing for the information technology security of any State agency that fails to adhere to security standards adopted pursuant to this section. Any actions taken by the State Chief Information Officer under this subsection shall be reported to the Information Resources Management Commission at its next scheduled meeting.

(d) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as otherwise provided by this subsection, all information technology security purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State Chief Information Officer in accordance with security standards adopted under this section.

(1) If the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the North Carolina Community Colleges System develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State Chief Information Officer under this section, then these entities may elect to be governed by their own respective security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology security. The State Chief Information Officer shall consult with the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units, and the North Carolina Community Colleges System in reviewing the security standards adopted by those entities.

(2) If the State Chief Information Officer certifies that a State agency has developed security standards that meet or exceed those set under this section, then the agency may elect to be governed by its own security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology secu-

rity. This certification by the State Chief Information Officer is subject to annual renewal and may be revoked by the State Chief Information Officer at any time that a State agency's standards no longer exceed those set under this section.

(3) Before a State agency may enter into any contract with another party for an assessment of network vulnerability, including network penetration or any similar procedure, the State agency shall notify the State Chief Information Officer and obtain approval of the request. The State Chief Information Officer shall refer the request to the State Auditor for a determination of whether the Auditor's office can perform the assessment and testing. If the State Auditor determines that he can perform the assessment and testing, then the State Chief Information Officer shall authorize the assessment and testing by the Auditor. If the State Auditor determines that his office cannot perform the assessment and testing, then with the approval of the State Chief Information Officer and State Auditor, the State agency may enter into a contract with another party for the assessment and testing. If the State agency enters into a contract with another party for assessment and testing, the State agency shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision, but the contractor must provide the State agency with detailed reports of the security issues identified pursuant to this subdivision that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State Chief Information Officer and the State Auditor with copies of the detailed reports.

(e) The State Chief Information Officer shall submit the enterprise-wide set of standards for the State's information technology security to the Information Resources Management Commission for approval. The Information Resources Management Commission shall report approval of the standards to the Joint Legislative Commission on Governmental Operations prior to implementation of the standards. The State Chief Information Officer shall review and revise the standards at least annually, and the revisions shall be subject to approval by the Information Resources Management Commission, with the Commission reporting to the Joint Legislative Commission on Governmental Operations on the revisions.

(f) The head of each State agency shall cooperate with the State Chief Information Officer in the discharge of his or her duties by:

(1) Providing the full details of the agency's information technology and operational requirements.

(2) Providing comprehensive information concerning the information technology security employed to protect the agency's information technology.

(3) Forecasting the parameters of the agency's projected future information technology security needs and capabilities.

(4) Designating an agency liaison in the information technology area to coordinate with the State Chief Information Officer.

The information provided by State agencies to the State Chief Information Officer under this subsection is protected from public disclosure pursuant to G.S. 132-6.1(c). (1999-434, s. 10; 2000-174, s. 2; 2001-424, s. 15.2(b); 2002-126, s. 27.2(a).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 27.2(a), effective November 1, 2002, added subdivision (d)(3).

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, including, but not limited to, negotiations, reverse auctions, and the solicitation, offer, and acceptance of electronic bids, and 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.

(c) For purposes of this section, "reverse auction" means a real-time purchasing process in which vendors compete to provide goods or services at the lowest selling price in an open and interactive electronic environment. The vendor's price may be revealed during the reverse auction. The Office may contract with a third-party vendor to conduct the reverse auction.

(d) For purposes of this section, "electronic bidding" means the electronic solicitation and receipt of offers to contract. Offers may be accepted and contracts may be entered by use of electronic bidding.

(e) The Office may use the electronic procurement system established by G.S. 143-48.3 to conduct reverse auctions and electronic bidding. All requirements relating to formal and competitive bids, including advertisement, seal, and signature, are satisfied when a procurement is conducted or a contract is entered in compliance with the reverse auction or electronic bidding requirements established by the Office.

(f) The Office may adopt rules consistent with this section. (1999-434, s. 10; 2000-174, s. 2; 2002-107, s. 4; 2002-159, s. 64(a).)

Effect of Amendments. — Session Laws 2002-107, s. 4, as amended by Session Laws 2002-159, s. 64(a), effective September 6, 2002, and applicable to bidding opportunities advertised on or after that date, rewrote subdivision (b)(1); and added subsections (c) through (f).

Article 4.

Secretary of State.

§ 147-37. Secretary of State; fees to be collected.

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office, except that if two or more certificates for foreign adoption are requested concurrently, the fee for the second and subsequent certificates is five dollars ($5.00). (R.C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C.S., s. 3864; 1979, c. 85, s. 2; 1991, c. 429, s. 1; 1998-212, s. 29A.9(e); 2002-126, s. 29A.32.)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 29A.32, effective November 1, 2002, added "except that if two or more certificates for foreign adoption are requested concurrently, the fee for the second and subsequent certificates is five dollars ($5.00)" at the end of the last sentence.

Article 5A.

Auditor.

§ 147-64.6. Duties and responsibilities.

(a) It is the policy of the General Assembly to provide for the auditing of State agencies by the impartial, independent State Auditor.

(b) The duties of the Auditor are independently to examine into and make findings of fact on whether State agencies:

(1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting and auditing; and other necessary elements of legislative or management control.

(2) Are providing financial and other reports which disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of such programs and operations.

(3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.

(4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws and regulations of the State, and, if applicable, federal law and regulation.

(5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal law and regulation.

(c) The Auditor shall be responsible for the following acts and activities:

(1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed

by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.

(2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.

(3) The Auditor, on his own initiative and as often as he deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with his overall responsibility as contained in this act, make or cause to be made audits of all or any part of the activities of the State agencies.

(4) The Auditor, at his own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. He shall coordinate, to the extent deemed practicable, the auditing conducted within the State to meet the needs of all governmental bodies.

(5) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by the State Departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal laws and regulations.

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses.

(6) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions, or recommendations he deems appropriate concerning any aspect of such agency's activities and operations.

(7) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited into the general fund as nontax revenue.

(8) The Auditor shall examine as often as may be deemed necessary the accounts kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the General Assembly, with copy of such report to the Governor and Attorney

General. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(9) The Auditor may examine the accounts and records of any bank or financial institution relating to transactions with the State Treasurer, or with any State agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

(10) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various State agencies which are supported partially or entirely from State funds. Such examinations will be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient, or otherwise inadequate, he shall recommend changes to the State Controller. The State Controller shall prescribe and supervise the installation of such changes, as provided in G.S. 143B-426.39(2).

(11) The Auditor shall, through appropriate tests, satisfy himself concerning the propriety of the data presented in the Comprehensive Annual Financial Report and shall express the appropriate auditor's opinion in accordance with generally accepted auditing standards.

(12) The Auditor shall provide a report to the Governor and Attorney General, and other appropriate officials, of such facts as are in his possession which pertain to the apparent violation of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

(13) At the conclusion of an audit, the Auditor or his designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written response shall be included in the final report if received within 30 days from receipt of the draft report.

(14) The Auditor shall notify the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate that an audit report has been published, its subject and title, and the locations, including State libraries, at which the report is available. The Auditor shall then distribute copies of the report only to those who request a report. The copies shall be in written or electronic form, as requested. He shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record; Provided, nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law.

(15) It is not the intent of the audit function, nor shall it be so construed, to infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities set forth in G.S. 126-84. The Auditor shall provide a telephone hotline to receive such allegations and informant may choose whether to remain anonymous. The Auditor shall implement the necessary policies and procedures to

investigate hotline allegations and recommend appropriate action. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate agency immediately. In addition, the Auditor shall publicize the hotline number periodically and shall report findings to the agencies involved.

All records maintained by the State Auditor which involve unsubstantiated allegations of improper governmental activities set forth in G.S. 126-84 shall be destroyed within four years from the date such allegation was received.

(17) The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office.

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.82(d)(1) or (2), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.82(d)(3) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors.

(d) Reports and Work Papers. — The Auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under his authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of his office shall be retained according to an agreement between the Auditor and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, and notwithstanding the provisions of G.S. 126-24, pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the Auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations.

Except as provided above, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential. (1983, c. 913, s. 2; 1985 (Reg. Sess., 1986), c. 1024, ss. 24, 25; 1987, c. 738, s. 62; 1989, c. 236, s. 2; 1999-188, s. 2; 2001-142, s. 2; 2001-424, ss. 9.1(a), 15.2(c); 2002-126, s. 27.2(b); 2002-159, s. 48.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 27.2(b), effective November 1, 2002, added the fifth and sixth sentences in subdivision (c)(18).

Session Laws 2002-159, s. 48, effective October 11, 2002, inserted the next-to-last sentence of subdivision (c)(18), as amended by Session Laws 2002-126, s. 27.2(b).

Article 6.

Treasurer.

§ 147-69.3. Administration of State Treasurer's investment programs.

(a) The State Treasurer shall establish, maintain, administer, manage, and operate within the Department of State Treasurer one or more investment programs for the deposit and investment of assets pursuant to the provisions of G.S. 147-69.1 and G.S. 147-69.2.

(b) Any official, board, commission, other public authority, local government, school administrative unit, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of those funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. In the absence of specific statutory provisions to the contrary, any of those funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer.

(c) The State Treasurer's investment programs shall be so managed that in the judgment of the State Treasurer funds may be readily converted into cash when needed.

(d) Except as provided by G.S. 147-69.1(d), the total return earned on investments shall accrue pro rata to the fund whose assets are invested according to the formula prescribed by the State Treasurer with the approval of the Governor and Council of State.

(e) The State Treasurer has full powers as a fiduciary to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities or investments in which any of the programs created pursuant to this section have been invested, and may reinvest the proceeds from the sale of those securities or investments and any other investable assets of the program.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State Treasurer, such costs to be paid from each program, and to the extent not otherwise chargeable directly to the income or assets of the specific investment program or pooled investment vehicle, shall be deposited with the State Treasurer as a General Fund nontax revenue. The cost of administration, management, and operation of investment programs established pursuant to this section and not directly paid from the income or assets of such program

shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act.

(g) The State Treasurer is authorized to retain the services of independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs created pursuant to this section.

(h) The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, the Advisory Budget Commission, and the chairs of the Finance Committees of the House of Representatives and the Senate.

(i) The State Treasurer shall report at least twice a year to the General Assembly, through the Finance Committees of the House of Representatives and the Senate, on the investment programs created under this section. The Treasurer shall present the reports to a joint meeting of the Finance Committees. The chairs of the Finance Committees may receive the reports and call the meetings. The Finance Committees may meet during the interim as necessary to hear the reports from the State Treasurer. The State Treasurer's report and presentation to the Finance Committees shall include all of the following:

(1) A full and complete statement of all moneys invested by virtue of the provisions of G.S. 147-69.1 and G.S. 147-69.2.
(2) The nature and character of the investments.
(3) The revenues derived from the investments.
(4) The costs of administering, managing, and operating the investment programs, including the recapture of any investment commissions.
(5) A statement of the investment policies for the revenues invested.
(6) Any other information that may be helpful in understanding the State Treasurer's investment policies and investment results.
(7) Any other information requested by the Finance Committees.

(j) Subject to the provisions of G.S. 147-69.1(d), the State Treasurer shall adopt any rules necessary to carry out the provisions of this section. (1979, c. 467, s. 3; 1981, c. 445, ss. 4, 5; 1983, c. 515, s. 1; c. 702, s. 10; 1983 (Reg. Sess., 1984), c. 1034, ss. 116, 117; 1987, c. 751, ss. 6-8; 2001-444, s. 4; 2002-126, s. 6.12.)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 6.12, effective July 1, 2002, in the last sentence of subsection (h), deleted "and" following "State Auditor," and added "and the chairs of the Finance Committees of the House of Representatives and the Senate"; and rewrote subsection (i).

Article 6B.

Statewide Accounts Receivable Program.

§ 147-86.22. Statewide accounts receivable program.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 25.1(a), provides: "During the 2002-2003 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."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Article 6C.

Health and Wellness Trust Fund.

§ 147-86.30. Health and Wellness Trust Fund established.

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 2.2(h), as amended by Session Laws 2002-159, s. 69, provides: "The General Assembly finds that over the last two fiscal years, the cost of the Medicaid program has increased over one billion dollars ($1,000,000,000). The downturn in the economy has caused an unforeseeable increase in the number of persons eligible for the program. Even with the significant expansion funds appropriated for the increased costs, transfers of funds to meet obligations for the 2001-2002 fiscal year, and significant cost-savings measures imposed by the General Assembly and the Department of Health and Human Services, Medicaid will still need additional State funds next year to cover increased costs.

"The General Assembly further finds that due to the downturn in the economy and the loss of jobs in various sectors of the economy, the State must undertake various economic initiatives.

"Funds transferred pursuant to this section shall be used only for Medicaid and for economic initiatives.

"Notwithstanding G.S. 143-16.4(a2), of the funds added to the Tobacco Trust Account from the Master Settlement Agreement settlement payments pursuant to Section 6(2) of S.L. 1999-2 during the 2002-2003 fiscal year, the sum of thirty-eight million dollars ($38,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2002-2003 fiscal year.

"Notwithstanding G.S. 143-16.4(a1), of the funds added to the Health Trust Account from the Master Settlement Agreement settlement payments pursuant to Section 6(2) of S.L. 1999-2 during the 2002-2003 fiscal year, the sum of forty million dollars ($40,000,000) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2002-2003 fiscal year.

"Notwithstanding G.S. 147-86.30(c), the Health and Wellness Trust Fund Commission may transfer up to eighteen million dollars ($18,000,000) from the Fund Reserve created in G.S. 147-86.30 to the Health and Wellness Trust Fund nonreserved funds to be expended in accordance with G.S. 147-86.30(d) during the 2002-2003 fiscal year."

Session Laws 2002-126, s. 6.8(a), provides: "Notwithstanding G.S. 147-86.30, the Health and Wellness Trust Fund Commission may for the fiscal year 2002-2003 expend not more than three million dollars ($3,000,000) of the funds reserved pursuant to G.S. 147-86.30(c) to develop and implement a Senior Prescription Drug Access Program. As used in this section, the term "senior" means an individual age 65 years and older. The purpose of the Program is to reduce costs of and improve access to and use of prescription drugs by:

"(1) Providing one-on-one assistance to seniors and low-income citizens in accessing public and private prescription drug assistance programs.

"(2) Making available pharmacist evaluators to review all prescriptions and to provide face-to-face counseling for seniors to promote compliance and identify potential adverse effects from interactions among the prescribed drugs.

"(3) Utilizing software currently licensed by the Department of Health and Human Services to guide patients through the complexities of all drug coverage options, including drug acquisition through low-cost or discount drug programs provided through manufacturer's card programs, and by government programs.

"Drug acquisition services under the Program shall be available to senior citizens and to low-income citizens eligible for assistance under these public and private prescription drug programs. Counseling services provided by the Program shall be available to senior citizens age 65 and older. There shall be no fee for Program medication counseling services to seniors who are Medicaid recipients and seniors enrolled in Carolina CARxES. The Commission may authorize a reasonable fee to be charged by the pharmacist evaluator to other seniors using medication counseling services, provided that the fee is charged on a sliding scale based on individual or family income. In no event may the fee exceed the actual cost of the service provided. The Commission shall consult with other State agencies and public and private entities to avoid duplication and enhance cooperation and collaboration in providing Program services. In allocating funds under the Program, the Commission shall consider diversity of populations served, geographic representation, and increasing community capacity to respond to health needs. The Commission may phase in the availability of services such that initially all geographic regions of the State have services available."

Session Laws 2002-126, s. 6.8(b), provides: "In developing and implementing the Senior Prescription Drug Access Program, the Commission may do the following:

"(1) Establish a centralized database with linkages to Medicaid databases to enable review of each participant's prescription drug regimen and to ensure quality of services, quality of care, and cost-effectiveness. The database shall comply with all State and federal privacy protection requirements and shall be accessible only to participating pharmacists, primary care physicians, and case managers.

"(2) Use reserved funds authorized under this section to contract with public and private entities to provide prescription drug assistance services.

"(3) Use reserved funds authorized under this section to award grants to applicants eligible under G.S. 147-86.31 to receive grant funds. Grant funds may be used to subsidize costs of hiring and training staff to operate drug acquisition software."

Session Laws 2002-126, s. 6.8(c), provides: "The Commission shall provide for ongoing evaluation of the Program to measure its usage and effectiveness. The Commission shall include in its annual report required under G.S. 147-86.35 the use of funds for and activities of the Senior Prescription Drug Access Program and the results of its Program evaluation. The report shall include data on the number of persons who received services, fees authorized, and the geographic distribution of Program services."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 147-86.31. Health and Wellness Trust Fund; eligibility for grants; annual reports from non-State agencies.

Cross References. — As to the development and implementation of a Senior Prescription Drug Access Program, see the note at G.S. 147-86.30

§ 147-86.35. Health and Wellness Trust Fund; reporting requirements.

Cross References. — As to Report on the development and implementation of a Senior Prescription Drug Access Program, see the note at G.S. 147-86.30.

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

§ 148-6. Custody, employment and hiring out of convicts.

CASE NOTES

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 148-10.3. Electronic monitoring costs.

Personnel, equipment, and other costs of providing electronic monitoring of pretrial or sentenced offenders shall be reimbursed to the Department of Correction by the State or local agency requesting the service in an amount not exceeding the actual costs. (2002-126, s. 17.10(a).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 17.10(b), provides: "The Department of Correction shall report by March 1, 2003, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on efforts to increase the use of electronic monitoring of sentenced offenders in the community as an alternative to the incarceration of probation violators. The report shall also document the geographical distribution of electronic monitoring use."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-126, s. 31.7, made this section effective July 1, 2002.

Article 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.

CASE NOTES

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit.

Editor's Note. —

Session Laws 2001-424, s. 25.4, as amended by Session Laws 2002-126, s. 17.2, provides: "The Department of Correction may use funds available to the Department for the 2001-2003 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report by December 1 and May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 148-33. Prison labor furnished other State agencies.

CASE NOTES

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 148-37. Additional facilities authorized; contractual arrangements.

OPINIONS OF ATTORNEY GENERAL

Public Bidding Requirements Not Applicable to Subsection (b1). — The public bidding requirements of Article 8, Chapter 143, G.S. 143-128 et seq., are not applicable to the construction of the three close security correctional facilities authorized by G.S. 148-37(b1), as the statute clearly contemplates that such facilities will be constructed by the private sector using private funds. See opinion of Attorney General to Mr. Robert M. High, Deputy Treasurer, N. C. Department of State Treasurer, 2000 N.C. AG LEXIS 34 (4/17/2000).

Purchase of Prison Facilities After Construction by Private Firm. — Subsection

(b1) neither expressly nor by implication authorizes the state to establish a nonprofit corporation to sell tax-exempt certificates of participation in order to finance a purchase of prison facilities immediately upon completion of construction by a private firm. See opinion of Attorney General to Mr. Robert M. High, Deputy Treasurer, N. C. Department of State Treasurer, 2000 N.C. AG LEXIS 34 (4/17/2000).

Article 4A.

Out-of-State Parolee Supervision.

§ 148-65.1. (This article has a delayed repeal date. See notes.) Governor to execute compact; form of compact.

Cross References. — For the Interstate Compact for the Supervision of Adult Offenders, see § 148-65.4 et seq.

Article Repealed Effective October 23, 2003. — This article is repealed effective October 23, 2003, by Session Laws 2002-166, s. 2.

Article 4B.

Interstate Compact for the Supervision of Adult Offenders.

§ 148-65.4. Short title.

This Article may be cited as "The Interstate Compact for the Supervision of Adult Offenders". (2002-166, s. 1.)

Editor's Note. — Session Laws 2002-166, s. 5, made this Article effective October 23, 2002.

Session Laws 2002-166, s. 3, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department."

§ 148-65.5. Governor to execute compact; form of compact.

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective

management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for the Supervision of Adult Offenders, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

Article I.
Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) To provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;

(2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and

(3) To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will:

(1) Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;

(4) Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provision of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of the public policies and are therefore public business.

Article II.
Definitions.

(a) As used in this compact, unless the context clearly requires a different construction:
(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.
(2) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.
(3) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.
(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.
(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.
(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.
(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.
(8) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.
(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.
(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.
(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.
(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.
(13) "State council" means the resident member of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

Article III.
The Compact Commission.

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee that shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee oversees the day-to-day activities managed by the executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the Interstate Commission; and performs other duties as directed by the commission or set forth in the bylaws.

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the

state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

Article V.

Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff when it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue or be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI.

Organization and Operation of the Interstate Commission.

(a) Bylaws. — The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:

a. For the establishment of committees, and

b. Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start- up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff. — The Interstate Commission shall, by a majority of the members, elect from among its members a chair and a vice-chair, each of whom shall have such authorities and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise

such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. — The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d) Qualified Immunity, Defense, and Indemnification. — The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VII.
Activities of the Interstate Commission.

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which the compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member

state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor,

including a description of each of the views expressed on any item and the record of any recall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII.

Rule-making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551, et seq., and the Federal Advisory Committee Act, 5 U.S.C. § 1, et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule- making record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principle office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must, at a minimum, include:

a. Notice to victims and opportunity to be heard;

b. Offender registration and compliance;

c. Violations/returns;

d. Transfer procedures and forms;

e. Eligibility for transfer;

f. Collection of restitution and fees from offenders;

g. Data collection and reporting;

h. The level of supervision to be provided by the receiving state;

i. Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

j. Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(f) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

Article IX.

Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. — The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. — The compacting states shall report to the Interstate Commission on issues or activities of concern to them and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. — The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any and all means set forth in Article XII, subsection (b) of this compact.

Article X.

Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment for each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consider-

ation the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI.

Compacting State, Effective Date, and Amendment.

(a) Any state, as defined in article ii of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. Therefore, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII.

Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. — Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the Chair of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default. — If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(2) Remedial training and technical assistance as directed by the Interstate Commission;

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council.

The grounds of default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. — The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(d) Dissolution of Compact. — The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII.
Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provision of the compact shall be enforceable.
(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Article XIV.
Binding Effect of Compact and Other Laws.

(a) Other Laws. — Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. — All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective. (2002-166, s. 1.)

§ 148-65.6. Implementation of the compact.

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of 11 members. The Secretary of Correction, or the Secretary's designee, shall serve as the Compact Administrator for the State of North Carolina and as North Carolina's Commissioner to the Interstate Compact Commission. The Secretary of Correction, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;
(3) One at-large member, to be appointed by the Governor;
(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;
(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;
(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court; and
(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community Corrections.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact. (2002-166, s. 1.)

§ 148-65.7. Supervision fee.

Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State. (2002-166, s. 1.)

§ 148-65.8. Interstate parole and probation hearing procedures.

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for the Supervision of Adult Offenders, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. The appropriate officer or officers of this State shall, as soon as practicable following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the

offender involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Adult Offenders, a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the Supervision of Adult Offenders, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (2002-166, s. 1.)

§ 148-65.9. North Carolina sentence to be served in another jurisdiction.

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of the individual's North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Post-Release Supervision and Parole Commission. (2002-166, s. 1.)

Article 13.

Transfer of Convicted Foreign Citizens Under Federal Treaty.

§ 148-122. Transfer of convicted foreign citizens under treaty; consent by Governor.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the Governor may, on behalf of the State and subject to the terms of the treaty, authorize the Secretary of Correction to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of the State in the treaty. (2002-166, s. 4.)

Editor's Note. — Session Laws 2002-166, s. 3, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department."

Session Laws 2002-166, s. 5, made this Article effective January 1, 2003.

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) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.

(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, 3, 4, and 5 of Article 3 of Chapter 135 of the General Statutes.

(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan re-

quired by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.

(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.

(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.

(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).

(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), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.

(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.

(12) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan with respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.

(13) The Teachers' and State Employees' Comprehensive Major Medical Plan with respect to determinations by the Executive Administrator and Board of Trustees, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(14) The Department of Crime Control and Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.

(f) **(Effective until December 31, 2006)** 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.

G.S. 150B-1(f) is set out twice. See notes.

(f) **(Effective December 31, 2006)** Exemption from All But Judicial Review. — No Article in this Chapter except Artilce 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; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16.)

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1(h), regarding temporary orders by the State Board of Elections for the 2002 primaries and elections, provides: "Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible."

Session Laws 2002-21 (Extra Session), s. 1(k), provides: "As used in this section, 'order' also includes guidelines and directives."

Session Laws 2002-21 (Extra Session), s. 1(l), provides: "Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002. This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002."

Session Laws 2002-172, s. 7.1, contains a severability clause.

Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Effect of Amendments. —

Session Laws 2002-99, s. 7.(b), effective August 29, 2002, added subdivision (d)(11).

Session Laws 2002-159, s. 49, effective October 11, 2002, substituted "Parts 2, 3, 4, and 5 of Article 3" for "Parts 2 and 3 of Article 3" in subdivision (d)(7).

Session Laws 2002-172, s. 2.6, effective October 31, 2002, added subdivision (d)(10).

Session Laws 2002-190, s. 16, as amended by Session Laws 2002-159, s. 31.5, effective January 1, 2003, added subdivision (e)(14).

Legal Periodicals. —

For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

The administrative hearing provisions of this act, etc.

Under G.S. 90-270.15(a), the North Carolina Psychology Board is responsible for overseeing licensed psychologists practicing in the state, and it may discipline licensees who violate ethical or professional standards; under G.S. 90-270.15(e), disciplinary actions by the Board are governed by the Administrative Procedure Act, § 150B-1 et seq. Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

Strict Separation of Agency Functions Not Required. — Neither the Administrative Procedure Act, G.S. 150B-1 et seq., nor due process, requires a strict separation between agency functions. Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

Cited in DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001); Best v. Dep't of Health & Human Servs., 149 N.C. App. 882, 563 S.E.2d 573, 2002 N.C. App. LEXIS 396 (2002); Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

§ 150B-2. Definitions.

CASE NOTES

"Agency". —

Where an agency is not a unit of state government, but rather a local one, it does not fall under the definition of "agency" within the confines of the The Administrative Procedure Act, specifically, G.S. 150B-2(1a). Lee Ray Bergman Real Estate Rentals v. N.C. Fair Hous. Ctr., — N.C. App. —, 568 S.E.2d 883, 2002 N.C. App. LEXIS 1089 (2002).

Applied in DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

OPINIONS OF ATTORNEY GENERAL

Career banding project did not require formal rules. — A career banding project which the Office of State Personnel planned to implement did not require formal rules in order to be implemented. See opinion of Attorney General to Mr. Thomas H. Wright, State Personnel Director, Office of State Personnel, 2002 N.C. AG LEXIS 16 (4/12/02).

Article 2A.

Rules.

Part 1. General Provisions.

§ 150B-19. Restrictions on what can be adopted as a rule.

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission is authorized to adopt rules requiring permits for impacts to isolated wetlands and surface waters. See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

§ 150B-21. Agency must designate rule-making coordinator; duties of coordinator.

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission could immediately adopt temporary rules under G.S. 150B-21(a)(5) to establish a permit program for regulating impacts to isolated wetlands and surface waters because a recent decision of the U.S. Supreme Court invalidating the Army Corps of Engineers' exercise of jurisdiction over such isolated waters was a court order under G.S. 150B-21.1(a)(5). See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

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. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. 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 and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation. 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 Codifier 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 State Chief Information Officer may adopt temporary rules to implement the information technology procurement provisions of Article 3D of Chapter 147 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 Officer 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 Officer adopts a temporary rule pursuant to this subsection, the Officer must submit a reference to this subsection as the Officer's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Officer 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) Expiration by Session Laws 2001, ch. 421, s. 5.3, effective June 30, 2002.

(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 by Session Laws 2000, ch. 148, s. 5, effective July 1, 2002.

(2) **(Repealed effective July 1, 2003)** Article 34B of Chapter 115C of the General Statutes, relating to qualified zone academy bonds.

(a8) **(Expires on June 30, 2003)** Notwithstanding the provisions of subsection (a) of this section, the Secretary of Transportation may adopt temporary rules concerning the permitted height of mobile and modular homes. 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.

(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 Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection.

(a9) **(Expires June 30, 2003)** Notwithstanding the provisions of subsection (a) of this section, the Secretary of Transportation may adopt temporary rules pursuant to G.S. 113A-11(b) to establish a class of minimum criteria projects.

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 do all of the following:

(1) Notify persons on its mailing list, maintained pursuant to G.S. 150B-21.2(d), and any other interested parties, of his intent to adopt a temporary rule.

(2) Accept oral and written comments on the proposed temporary rule.

(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 shall 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 Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection.

(a10) **Expires on October 1, 2004)** Notwithstanding the provisions of subsection (a) of this section, the Department of Health and Human Services may adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program. 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 Department 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.

(3) Hold at least one public hearing on the proposed temporary rule.

When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.

(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. Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(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; 2001-126, s. 12; 2001-421, s. 2.3; 2001-424, ss. 27.17(b), 27.22(a); 2001-487, s. 21(g); 2002-97, ss. 2, 3; 2002-164, s. 4.6.)

Editor's Note. —

Session Laws 2002-63, s. 2, provides: "Notwithstanding G.S. 150B-21.1(a)(2), the North Carolina Locksmith Licensing Board may adopt temporary rules to implement S.L. 2001-369 until January 1, 2003."

Session Laws 2002-164, s. 5 provides that s. 4.6 of the act, which added subsection (a10), expires October 1, 2004.

Effect of Amendments. —

Session Laws 2002-97, ss. 2 and 3, effective August 29, 2002, in the last paragraph of subsection (a), inserted the second sentence; and in the last paragraph of subsection (b), added the last sentence.

Session Laws 2002-164, s. 4.6, effective Octo-

ber 23, 2002 and expiring on October 1, 2004, added subsection (a10).

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission could immediately adopt temporary rules under G.S. 150B-21(a)(5) to establish a permit program for regulating impacts to isolated wetlands and surface waters because a recent decision of the U.S. Supreme Court invalidating the Army Corps of Engineers' exercise of jurisdiction over such isolated waters was a court order under N.C.G.S. G.S. 150B-21.1(a)(5). See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

§ 150B-21.3. Effective date of rules.

(a) Temporary Rule. — A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. — A permanent rule approved by the Commission becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill enacted into law before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

(c) Executive Order Exception. — The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission and has not become effective under subsection (b) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill enacted into law on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill enacted into law within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(c1) Fees. — Notwithstanding any other provision of this section, a rule that establishes a new fee or increases an existing fee shall not become effective until the agency has complied with the requirements of G.S. 12-3.1.

(d) Legislative Day and Day of Adjournment. — As used in this section:

(1) A "legislative day" is a day on which either house of the General Assembly convenes in regular session.

(2) The "day of adjournment" of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.

(3) The "day of adjournment" of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

(e) OSHA Standard. — A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

(f) Technical Change. — A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(e); 1995 (Reg. Sess., 1996), c. 742, s. 43; 1996, 2nd Ex. Sess., c. 18, s. 7.10(f); 1997-34, s. 3; 2001-487, s. 80(b); 2002-97, s. 5.)

Editor's Note. —

Session Laws 2002-116, s. 1, effective September 17, 2002, provides: "Pursuant to G.S. 150B-21.3(b), the amendment to 15A NCAC 07H.0309 (Use Standards for Ocean Hazard Areas: Exceptions), as adopted by the Coastal Resources Commission and approved by the Rules Review Commission on 15 November 2001, by which subdivision "(9) swimming pools;" would be deleted from subsection (a) of the rule is disapproved and shall not become effective. The remainder of the amendments to 15A NCAC 7H.0309, as adopted by the Coastal Resources Commission and approved by the Rules Review Commission on 15 November 2001, shall become effective on 1 August 2002."

Administrative Rules Governing Sanitation of Hospitals, Nursing Homes, Rest Homes, and Other Institutions. — Session Laws 2002-160, ss. 1-5, effective October 17, 2002, provide: "Notwithstanding G.S. 150B-21.3(b), amendments to the following rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18, 2001, become effective March 1, 2003: 15A NCAC 18A.1301 (Definitions), 15A NCAC 18A.1302 (Approval of Plans), 15A NCAC 18A.1304 (Inspections), 15A NCAC 18A.1305 (Grading Residential Care Facilities in Institutions), 15A NCAC 18A.1306 (Public Display of Grade Card), 15A NCAC 18A.1307 (Reinspections), 15A NCAC 18A.1308 (Approved Institutions), 15A NCAC 18A.1309 (Floors), 15A NCAC 18A.1310 (Walls and Ceilings), 15A NCAC 18A.1312 (Toilet: Handwashing: Laundry: and Bathing Facilities), 15A NCAC 18A.1313 (Water Supply), 15A NCAC 18A.1314 (Drinking Water Facilities: Ice Handling), 15A NCAC 18A.1315 (Liquid Wastes), 15A NCAC 18A.1316 (Solid Wastes), 15A NCAC 18A.1317 (Vermin Control: Premises: Animal Maintenance), 15A NCAC 18A.1318 (Miscellaneous), 15A NCAC 18A.1319 (Furnishings and Patient Contact Items), 15A NCAC 18A.1320 (Food Service Utensils and Equipment), 15A NCAC 18A.1322 (Milk and Milk Products), 15A NCAC 18A.1323 (Food Protection), and 15A NCAC 18A.1324 (Employees).

"Notwithstanding G.S. 150B-21.3(b), 15A NCAC 18A.1327 (Incorporated Rules) adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18, 2001 becomes effective March 1, 2003.

"Notwithstanding G.S. 150B-21.3(b), amendments to 15A NCAC 18A.1311 (Lighting, Ventilation and Moisture Control) and 15A NCAC 18A.1321 (Food Supplies) adopted by the Commission for Health Services and approved by the Rules Review Commission on November 15, 2001 become effective March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Re-

sources, with the assistance of local health departments, shall field test the amended rules listed in Sections 1 through 3 of this act by conducting trial inspections of a representative sample of facilities subject to the amended rules throughout the State. Trial inspections under the amended rules shall be performed during the period 1 October 2002 through 1 February 2003 in conjunction with the regular inspection of the representative sample of facilities under rules in effect during the field test period. A facility that is subject to a trial inspection shall not be liable for an enforcement action for any violation of an amended rule that is observed during a trial inspection but may be liable for an enforcement action under rules in effect during the field test period. The purposes of the field test shall be to determine what expenditures, if any, will be required of facilities in order to comply with the amended rules and whether the amended rules will result in lower inspection grades for facilities. As a part of the field test, the Division shall also review the amended rules, giving particular attention to applicable federal regulations and to the incorporation by reference of any other rules or standards in the amended rules, to determine whether the amended rules will result in any duplication or conflict in applicable requirements or standards and whether the amended rules will result in duplicative or conflicting inspection or enforcement policies or procedures. The Division of Environmental Health shall compile and analyze field test data to determine whether any of the amended rules should be revised. The Division shall report the results of the field test required by this section, any recommendations to the Commission for Health Services regarding revisions to the amended rules, and the status of any recommended rule revisions to the Environmental Review Commission on or before March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources shall offer training to staff of facilities that are subject to the amended rules listed in Sections 1 through 3 of this act. Training shall be offered in the various regions of the State as appropriate and shall include information on the requirements of the amended rules, enforcement policies and procedures, and updated information as to any revisions to the amended rules that may be recommended as a result of the field test of the amended rules required by Section 4 of this act."

Temporary and Permanent Rules Governing Licensing of Family Care Homes and Homes for the Aged and Infirm. — Session Laws 2002-160, s. 6(a)-(d), effective October 17, 2002, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a).

"Notwithstanding Sections 1 through 3 of this act, the Commission for Health Services may adopt temporary and permanent rules to further delay the effective date of any of the rules listed in Sections 1 through 3 of this act. The Commission for Health Services may adopt temporary and permanent rules to revise any of the rules listed in Sections 1 through 3 of this act.

"The Medical Care Commission may adopt temporary and permanent rules to amend Subchapter 42C (Licensing of Family Care Homes) and Subchapter 42D (Licensing of Homes for the Aged and Infirm) of Chapter 42 (Individual and Family Support) of Title 10 (Department of Health and Human Services) of the North Carolina Administrative Code. Prior to the adoption of temporary rules under this subsection, the Commission shall:

"(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

"(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

"(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.

"(4) Hold at least one public hearing on the proposed temporary rule.

"Notwithstanding 26 NCAC 2C.0102(11), the Commission for Health Services and the Medical Care Commission may adopt temporary rules as provided in this section until July 1, 2003."

Effect of Amendments. —

Session Laws 2002-97, s. 5, effective August 29, 2002, added subsection (c1).

Part 4. Publication of Code and Register.

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

(1) Cite the law under which the rule is adopted.
(2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.
(3) Be in the physical form specified by the Codifier of Rules.
(4) Have been approved by the Commission, if the rule is a permanent rule.
(5) Have complied with the provisions of G.S. 12-3.1, if the rule establishes a new fee or increases an existing fee. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); c. 1028, s. 35; 1987, c. 285, s. 16; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(*l*); 2002-97, s. 4.)

Effect of Amendments. — Session Laws 2002-97, s. 4, effective August 29, 2002, added subdivision (5).

§ 150B-21.24. Access to Register and Code.

(a) Register. — The Codifier of Rules shall make available the North Carolina Register on the Internet at no charge. Upon request the Codifier shall provide a free copy of the current volume of the Register to any person who receives a free copy of the North Carolina Administrative Code or any member of the General Assembly.

(b) Code. — The Codifier of Rules shall make available the North Carolina Administrative Code on the Internet at no charge. The Codifier shall distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:

(1) One copy to the board of commissioners of each county that specifically requests a printed copy, to be placed at the county clerk of court's office or at another place selected by the board of commissioners. The Codifier of Rules is not required to provide a copy of the Administrative Code to any board of county commissioners unless a request is made.
(2) One copy to the Commission.
(3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.
(4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.
(5) One copy to the Administrative Office of the Courts.
(6) One copy to the Governor.
(7) One copy to the Legislative Services Commission for the use of the General Assembly.
(8) Repealed by Session Laws 2002-97, s. 1, effective August 29, 2002.
(9) One copy to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7. (1973, c. 1331, s. 1; c. 69, ss. 3, 7; c. 688, s. 1; 1979, c. 541, s. 2; 1979, 2nd Sess., c. 1266, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1003, s. 2; c. 1022, s. 1(1), (19); c. 1032, s. 12; 1987, c. 774, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1111, s. 3; 1989, c. 500, s. 43(a); 1991, c. 418, s. 1; 2002-97, s. 1.)

Effect of Amendments. — Session Laws 2002-97, s. 1, effective August 29, 2002, rewrote the section.

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

Cited in DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

CASE NOTES

Address Supplied by Agency Must Be Correct to Trigger Time Limitation. — If an agency supplies a petitioner the address of the entity to which the appeal from its actions must be sent, it must do so accurately in order to trigger the running of the 30-day filing period under G.S. 150B-23(f). Gray v. N.C. Dep't of Env't, Health & Natural Res., 149 N.C. App. 374, 560 S.E.2d 394, 2002 N.C. App. LEXIS 201 (2002).

Failure to Comply with Time Limitation. —

Where petitioner mailed his petition to the Office of Administrative Hearings at the incorrect address it had supplied, and a copy was also faxed to OAH, and did not file a subsequent original petition until after the agency moved to dismiss, petition would be considered timely. By failing to object to this omission, and by actively participating in the pre-hearing procedures and hearing, the agency waived its objection. Gray v. N.C. Dep't of Env't, Health & Natural Res., 149 N.C. App. 374, 560 S.E.2d 394, 2002 N.C. App. LEXIS 201 (2002).

Cited in M.E. v. Board of Educ., 186 F. Supp. 2d 630, 2002 U.S. Dist. LEXIS 2984 (W.D.N.C. 2002).

§ 150B-29. Rules of evidence.

Legal Periodicals. —

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

§ 150B-30. Official notice.

Legal Periodicals. —

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

§ 150B-33. Powers of administrative law judge.

Legal Periodicals. —

For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

CASE NOTES

Procedural Due Process. — Lumber company was never unconstitutionally deprived of its permit as a result of the state agency failing to provide proper due process, since it was through due process provided by G.S. 150B that the lumber company's permit was reinstated. Godfrey Lumber Co. v. Howard, — N.C. App. —, 566 S.E.2d 825, 2002 N.C. App. LEXIS 880 (2002).

§ 150B-34. Decision of administrative law judge.

Legal Periodicals. —

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

§ 150B-36. Final decision.

Legal Periodicals. —

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

Article 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

CASE NOTES

Charges Against Licensees of a Board. — Notice of disciplinary hearings by the North Carolina Psychology Board must be given not less than 15 days before the hearing, under G.S. 150B-38(b); under G.S. 150B-40(a), such hearings shall be conducted in a fair and impartial manner and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy. Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

Legal Periodicals. — For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

CASE NOTES

Changes Against Licensees of a Board. —

Notice of disciplinary hearings by the North Carolina Psychology Board must be given not less than 15 days before the hearing, under G.S. 150B-38(b); under G.S. 150B-40(a), such hearings shall be conducted in a fair and impartial manner and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or

policy. Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

Spirit Not Violated. — Under the plain language of G.S. 150B-40(d), the prohibition on ex parte communication by agency members "begins at the time of the notice of hearing;" where the probable cause hearing took place two months before the North Carolina Psychology Board issued its statement of charges, and nine months before it issued the notice of hearing, as the probable cause hearing occurred well before the statutory prohibition on ex parte communications arose, the trial court erred in concluding that the Board violated the spirit of G.S. 150B-40(d). Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

Cited in Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

§ 150B-41. Evidence; stipulations; official notice.

CASE NOTES

Cited in Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

ARTICLE 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Legal Periodicals. —
For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

CASE NOTES

I. GENERAL CONSIDERATION.

Cited in In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002), cert. granted, 356 N.C. 163, 569 S.E.2d 282 (2002).

VII. ILLUSTRATIVE CASES.

State Transportation Agency's Condemnation of Property. — Owners of condemned land who challenged state transportation agency's proposed highway satisfied the five requirements for judicial review of an adverse transportation agency decision when they showed: (1) they were aggrieved; (2) there was a contested case; (3) there was a final agency decision; (4) their administrative remedies were exhausted; and (5) no other adequate procedure for judicial review could be provided by another statute. DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Legal Periodicals. —
For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

§ 150B-45. Procedure for seeking review; waiver.

CASE NOTES

Time for Filing Petition. — Owners of condemned land were required to file their petition within 30 days of publication of final environmental impact statement concerning proposed state highway. DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

Cited in In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002), cert. granted, 356 N.C. 163, 569 S.E.2d 282 (2002).

§ 150B-51. Scope and standard of review.

Legal Periodicals. —

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

I. General Consideration.
III. Unlawful Procedure.
IV. "Whole Record" Test.

I. GENERAL CONSIDERATION.

Termination After Refusing Improper Drug Testing Held Error. — Public employees met their burden of showing their employer did not have reasonable cause to ask them to submit to drug testing, and they could not be terminated for refusing to submit to testing, because they could not be required to waive a constitutionally protected right, and their termination was affected by error of law, under G.S. 150B-51(b)(4). Best v. Dep't of Health & Human Servs., 149 N.C. App. 882, 563 S.E.2d 573, 2002 N.C. App. LEXIS 396 (2002).

Cited in Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 563 S.E.2d 258, 2002 N.C. App. LEXIS 488 (2002).

III. UNLAWFUL PROCEDURE.

When a school board does not follow proper procedures in reviewing a case manager's report and recommendation concerning the termination of a career employee, it is bound by the case manager's findings of fact, pursuant to G.S. 150B-51(b)(3). Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Unlawful Suspension Procedure. — School board's policy which allowed a student facing long-term suspension to have an adult who was not a parent with him at a hearing on that suspension, but prevented the adult from being an attorney, or from questioning witnesses, making a statement, or otherwise representing the student, violated the student's substantial due process rights regarding his protected property interest in obtaining an education, and reversal of such suspension was required under G.S. 150B-51(b). In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002), cert. granted, 356 N.C. 163, 569 S.E.2d 282 (2002).

IV. "WHOLE RECORD" TEST.

"Whole Record" Test. —

Under G.S. 150B-51(b)(5), upon judicial appeal from an agency, the trial court may reverse or modify an agency's decision if it is unsupported by substantial evidence in view of the entire record as submitted; the "whole record" test requires the reviewing court to examine all competent evidence to determine whether the agency decision is supported by substantial evidence, and the administrative findings of fact, if supported by substantial evidence in view of the entire record, are conclusive upon a reviewing court. Farber v. N.C. Psychology Bd., — N.C. App. —, 569 S.E.2d 287, 2002 N.C. App. LEXIS 1085 (2002).

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Granville (As to Chapter 152; office of coroner abolished): 2002-17, ss. 1, 2. Chapter 152 of the General Statutes is not applicable to Granville County.

Chapter 153A.

Counties.

Article 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government.

OPINIONS OF ATTORNEY GENERAL

The Gaston County Board of Commissioners may not abolish the Gaston County Police Department or assign its duties to some other entity unless and until that action is authorized by the General Assembly. See opinion of Attorney General to Heath R. Jenkins, Chairman, Gaston County Board of Commissioners, 2001 N.C. AG LEXIS 11 (3/12/2001).

Part 4. Personnel.

§ 153A-99. County employee political activity.

Legal Periodicals. — For article, "Political Patronage and North Carolina Law: Is Political Conformity With the Sheriff a Permissible Job Requirement for Deputies?," see 79 N.C.L. Rev. 1743 (2001).

Article 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

CASE NOTES

Ordinance Upheld. —
The enactment of the Sign Control Ordinance of Transylvania County, North Carolina, was a valid exercise of the general police power of Transylvania County, North Carolina, under G.S. 153A-121, and, therefore, Transylvania County did not have to follow the enactment procedures of ch. 153A, art. 18 in enacting the ordinance. Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

Regulation of Asphalt Plants. — A county's enactment of a moratorium on the building of asphalt plants and adoption of a polluting industries development ordinance pursuant to the statute's general grant of police power, rather than through the specific statutory provisions governing zoning, was proper. Tri-County Paving, Inc. v. Ashe County, 281 F.3d 430, 2002 U.S. App. LEXIS 2747 (4th Cir. 2002).

Cited in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

OPINIONS OF ATTORNEY GENERAL

Height of State Owned and Operated Structures. — This section does not grant authority to a county to regulate the height of state owned and operated structures under its general police power. See opinion of Attorney General to Mr. Jeffery M. Hedrick, Watauga County Attorney, 2000 N.C. AG LEXIS 33 (9/20/2000).

§ 153A-123. Enforcement of ordinances.

CASE NOTES

Ordinance's Enforcement Provisions Not Followed. — Although G.S. 153A-123 authorized Transylvania County, North Carolina, to collect a civil penalty for the violation of the terms of the Sign Control Ordinance of Transylvania County, North Carolina, a civil penalty was erroneously imposed on defendants, a property owner and an advertising company, where the enforcement procedures of the ordinance were not followed. Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

§ 153A-128. Regulation of explosive, corrosive, inflammable, or radioactive substances.

CASE NOTES

Constitutionality. — G.S. 153A-128, which permitted the county to enact its ordinances regulating the use and storage of explosives, did not constitute an unlawful local law under N.C. Const. art. II, § 24, since it applied to all counties in the state. S. Blasting Servs. v. Wilkes County, 288 F.3d 584, 2002 U.S. App. LEXIS 7853 (4th Cir. 2002).

§ 153A-136. Regulation of solid wastes.

Local Modification. — Orange: 2000-107, s. 2; 2002-117, s. 1.

§ 153A-140. Abatement of public health nuisances.

A county shall have authority, subject to the provisions of Article 57 of Chapter 106 of the General Statutes, to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety. Pursuant to this section, a board of commissioners may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes. The authority granted by this section may only be exercised upon adequate notice, the right to a hearing, and the right to appeal to the General Court of Justice. Nothing in this section shall be deemed to restrict or repeal the authority of any municipality to abate or remedy health nuisances pursuant to G.S. 160A-174, 160A-193, or any other general or local law. This section shall not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to this section. (1981 (Reg. Sess., 1982), c. 1314, s. 1; 2002-116, s. 2.)

Effect of Amendments. — Session Laws 2002-116, s. 2, effective September 17, 2002, added "or safety" at the end of the first sentence; and inserted the second sentence.

Article 7.

Taxation.

§ 153A-146. General power to impose taxes.

OPINIONS OF ATTORNEY GENERAL

County May Not Impose Late Payment Penalty or Administrative Fee Upon Delinquent Property Tax Accounts. — Because the statutes authorizing property taxes provide for interest and/or penalties, a county may not, by ordinance, impose a late payment penalty or administrative fee upon delinquent property tax accounts. See opinion of Attorney General to Lloyd C. Smith, Jr., Pritchett & Burch, PLLC, 2001 N.C. AG LEXIS 6 (3/6/2001).

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.

(2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.

(3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.

(4) Elections. — To provide for all federal, State, district and county elections.

(5) Jails. — To provide for the operation of a jail and other local confinement facilities.

(6) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.

(8) Social Services. — To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.

(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.

(3) Air Pollution. — To maintain and administer air pollution control programs.

(4) Airports. — To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. — To provide animal protection and control programs.

(6a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.

(6b) Auditoriums, coliseums, and convention and civic centers. — To provide public auditoriums, coliseums, and convention and civic centers.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Preparedness. — To provide for civil preparedness programs.

(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12.

(11) Fire Protection. — To provide fire protection services and fire prevention programs.

(12) Forest Protection. — To provide forest management and protection programs.

(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the local health department.

(14) Historic Preservation. — To undertake historic preservation programs and projects.

(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, or to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

(15a) Housing Rehabilitation. — To provide for housing rehabilitation programs authorized by G.S. 153A-376, including personnel costs related to the planning and administration of these programs. This subdivision applies only to counties with a population of 400,000 or more, according to the most recent decennial federal census.

(15b) Housing. — To undertake housing programs for low- and moderate-income persons as provided in G.S. 153A-378.

(16) Human Relations. — To undertake human relations programs.

(16a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.

(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. — To establish and maintain public libraries.

(20) Mapping. — To provide for mapping the lands of the county.

(21) Medical Examiner. — To provide for the county medical examiner or coroner.

(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, developmental disabilities, and substance abuse authority.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.

(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.

(26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.

(27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation. This subdivision does not authorize a county to provide public roads in the county in violation of G.S. 136-51.

(27a) Railway Corridor Preservation. — To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.

(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.

(28a) Roads. — To provide for the maintenance of county roads as authorized by G.S. 153A-301(d).

(29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not

required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(31a) Stormwater. — To provide structural and natural stormwater and drainage systems of all types.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall _____ County be authorized to levy annually a property tax at a rate not in excess of _____ cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of _____?

(2) Shall _____ County be authorized to levy annually a property tax at a rate not in excess of that which will produce $_____ for the purpose of _____?

(3) Shall _____ County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of _____?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to _____ County be increased from _____ on the one hundred dollars ($100.00) value of property subject to taxation to _____ on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1; 1983, c. 511, ss. 1, 2; 1985, c. 589, s. 57; 1987, c. 45, s. 2; c. 697, s. 2; 1989, c. 600, s. 5; c. 625, s. 25; c. 643, s. 1; 1989 (Reg. Sess., 1990), c. 1005, ss. 3-5; 1991 (Reg. Sess., 1992), c. 764, s. 1; c. 896, s. 1; 1993, c. 378, s. 2; 1997-502, s. 6; 1999-366, s. 3; 2002-159, s. 50(a); 2002-172, s. 2.4(a).)

Editor's Note. —

Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. — Session Laws 2002-159, s. 50(a), effective October 11, 2002, inserted "G.S. 158-7.1 and" in subdivision (c)(10b).

Session Laws 2002-172, s. 2.4(a), effective October 31, 2002, inserted "G.S. 158-7.1 and" in subdivision (c)(10b).

OPINIONS OF ATTORNEY GENERAL

County May Not Impose Late Payment Penalty or Administrative Fee Upon Delinquent Property Tax Accounts. — Because the statutes authorizing property taxes provide for interest and/or penalties, a county may not, by ordinance, impose a late payment penalty or administrative fee upon delinquent property tax accounts. See opinion of Attorney

General to Lloyd C. Smith, Jr., Pritchett & Burch, PLLC, 2001 N.C. AG LEXIS 6 (3/6/2001).

§ 153A-154.1. Uniform penalties for local meals taxes.

Editor's Note. —

Session Laws 2001-264, s. 3, as amended by Session Laws 2002-72, s. 3, provides: "Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

§ 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) **(Effective until February 1, 2003)** This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County.

(g) **(Effective February 1, 2003)** This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County. (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; 2001-162, s. 2; 2001-305, s. 2; 2001-321, s. 3; 2001-381, s. 10; 2001-434, s. 1; 2001-439, s. 18.2; 2001-468, s. 3; 2001-480, s. 14; 2001-484, s. 2; 2002-138, s. 5.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until February 1, 2003. The second version of subsection (g) set out above is effective February 1, 2003.

Tourism Promotion and Development. — Session Laws 2001-162, 2001-305, 2001-321, 2001-365, 2001-381, 2001-434, 2001-439, 2001-480, as amended by Session Laws 2002-36, and 2001-484 authorize the affected localities (the counties of Anson, Avery, Buncombe, Dare, Durham, Cabarrus, Carteret, Cumberland, Montgomery, Pender, Richmond, Rowan, Stanly, Washington and Vance, the Cities of Durham, Gastonia, Kings Mountain, Lincolnton, Monroe, and North Topsail Beach, the towns of Beech Mountain, Carrboro, Selma, Smithfield, Wilkesboro and Averasboro Township in Harnett County) to levy additional occupancy taxes for tourism promotion and development.

Session Laws 2002-95 authorizes New Hanover County to levy additional occupancy taxes for tourism promotion and development.

Effect of Amendments. —

Session Laws 2002-138, s. 5, effective February 1, 2003, in subsection (g), added New Hanover County to the list of localities to which the section applies.

Article 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-250. Ambulance services.

(a) A county may by ordinance franchise ambulance services provided in the county to the public at large, whether the service is based inside or outside the county. The ordinance may:

(1) Grant franchises to ambulance operators on terms set by the board of commissioners;

(2) Make it unlawful to provide ambulance services or to operate an ambulance in the county without such a franchise;

(3) Limit the number of ambulances that may be operated within the county;

(4) Limit the number of ambulances that may be operated by each franchised operator;
(5) Determine the areas of the county that may be served by each franchised operator;
(6) Establish and from time to time revise a schedule of rates, fees, and charges that may be charged by franchised operators;
(7) Set minimum limits of liability insurance for each franchised operator;
(8) Establish other necessary regulations consistent with and supplementary to any statute or any Department of Health and Human Services regulation relating to ambulance services.

Before it may adopt an ordinance pursuant to this subsection, the board of commissioners must first hold a public hearing on the need for ambulance services. The board shall cause notice of the hearing to be published once a week for two successive weeks before the hearing. After the hearing the board may adopt an ordinance if it finds that to do so is necessary to assure the provision of adequate and continuing ambulance service and to preserve, protect, and promote the public health, safety, and welfare.

If a person, firm, or corporation is providing ambulance services in a county or any portion thereof on the effective date of an ordinance adopted pursuant to this subsection, the person, firm, or corporation is entitled to a franchise to continue to serve that part of the county in which the service is being provided. The board of commissioners shall determine whether the person, firm, or corporation so entitled to a franchise is in compliance with Chapter 131E, Article 7; and if that is the case, the board shall grant the franchise.

(b) In lieu of or in addition to adopting an ordinance pursuant to subsection (a) of this section, a county may operate or contract for ambulance services in all or a portion of the county. A county may appropriate for ambulance services any revenues not otherwise limited as to use by law, and may establish and from time to time revise schedules of rates, fees, charges, and penalties for the ambulance services. A county may operate its ambulance services as a line department or may create an ambulance commission and vest in it authority to operate the ambulance services.

(c) A city may adopt an ordinance pursuant to and under the procedures of subsection (a) of this section and may operate or contract for ambulance services pursuant to subsection (b) of this section if (i) the county in which the city is located has adopted a resolution authorizing the city to do so or (ii) the county has not, within 180 days after being requested by the city to do so, provided for ambulance services within the city pursuant to this section. Any action taken by a city pursuant to this subsection shall apply only within the corporate limits of the city.

If a city is exercising a power granted by this subsection, the county in which the city is located may thereafter take action to provide for ambulance service within the city, either under subsection (a) or subsection (b) of this section, only after having given to the city 180 days' notice of the county's intention to take action. At the end of the 180 days, the city's authority under this subsection is preempted by the county.

(d) A county or a city may contract with a franchised ambulance operator or with another county or city for ambulance service to be provided upon the call of a department or agency of the county or city. A county may contract with a franchised ambulance operator for transportation of indigents or persons certified by the county department of social services to be public assistance recipients.

(e) Each county or city operating ambulance services is subject to the provisions of Chapter 131E, Article 7 ("Regulation of Emergency Medical Services"). (1967, c. 343, s. 5; 1969, c. 147; 1973, c. 476, s. 128; c. 822, s. 1; 1997-443, s. 11A.118(a); 2002-159, s. 51.)

Effect of Amendments. — Session Laws 2002-159, s. 51, effective January 1, 2002, substituted "Chapter 131E, Article 7" for "Chapter 130, Article 26" in the last paragraph of subsection (a); and substituted "Chapter 131E, Article 7 ('Regulation of Emergency Medical Services')" for "Chapter 130, Article 26 ('Regulation of Ambulance Services')" in subsection (e).

Article 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-279. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The County, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the County, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-owned railroad company under a claim of right over or adjacent to facilities used by or on behalf of the County.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the County and all services performed by a railroad pursuant to a contract with the County in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right-of-way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail-related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the County or a railroad, or otherwise occupied by the County or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the County concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. — The County may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the County enters into any contract authorized by subsection (b) of this section, the contract shall require the County to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the county, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad

Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the County does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the County, the County shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the County, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) Applicability. — This section shall apply only to counties that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 2.)

Editor's Note. — Session Laws 2002-78, s. 5, made this section effective August 15, 2002.

Session Laws 2002-78, s. 4, contains a severability clause.

Some of the definitions above were renumbered in alphabetical order at the direction of the Revisor of Statutes.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

CASE NOTES

Procedures of Article 18 Did Not Apply to County Sign Ordinance. — The enactment of the Sign Control Ordinance of Transylvania County, North Carolina, was a valid exercise of the general police power of Transylvania County, North Carolina, under G.S. 153A-121, and, therefore, Transylvania County did not have to follow the enactment procedures of ch. 153A, art. 18 in enacting the ordinance. Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

CASE NOTES

Cited in Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

Part 2. Subdivision Regulation.

§ 153A-335. "Subdivision" defined.

Local Modification. — Cherokee: 1977, c. 253; Chowan: 2002-141, s. 8 (applicable to all subdivisions created on or after June 16, 1992); Davie: 1995, c. 78, s. 1; Harnett: 1997, c. 246, s. 1; 2001-50, s. 1; Henderson: 1989 (Reg. Sess., 1990), c. 863, s. 1; Jones: 1999-125, s. 1; Montgomery: 1995, c. 337, s. 1; Onslow: 1975, c. 105; Pasquotank: 1993, c. 194, s. 1; Pender: 1991, c. 204, s. 2; Person: 1987 (Reg. Sess., 1988), c. 932, s. 2; Richmond: 2000-11; 2001-189, s. 1; Robeson: 1987, c. 535, s. 2; Scotland: 1983, c. 96; Stanly: 1987 (Reg. Sess., 1988), c. 930; 1991, c. 504; 1993 (Reg. Sess., 1994), c. 574; 1998-37; 1998-217, s. 7; Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 1.

Part 3. Zoning.

§ 153A-340. Grant of power.

CASE NOTES

Cited in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002); Mann Media, Inc. v. Randolph County Planning Bd., 356 N.C. 1, 565 S.E.2d 9, 2002 N.C. LEXIS 544 (2002).

OPINIONS OF ATTORNEY GENERAL

Height of State Owned and Operated Structures. — This section does not grant authority to a county to regulate the height of state owned and operated structures under its general police power. See opinion of Attorney General to Mr. Jeffery M. Hedrick, Watauga County Attorney, 2000 N.C. AG LEXIS 33 (9/20/2000).

§ 153A-341. Purposes in view.

CASE NOTES

Cited in Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

§ 153A-343. Method of procedure.

CASE NOTES

Cited in Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.

CASE NOTES

Applied in Mann Media, Inc. v. Randolph County Planning Bd., 356 N.C. 1, 565 S.E.2d 9, 2002 N.C. LEXIS 544 (2002).

§ 153A-345. Board of adjustment.

CASE NOTES

Applied in Mann Media, Inc. v. Randolph County Planning Bd., 356 N.C. 1, 565 S.E.2d 9, 2002 N.C. LEXIS 544 (2002).

Part 4. Building Inspection.

§ 153A-357. Permits.

(a) No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;

(2) The installation, extension, or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required 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. Violation of this section constitutes a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2; 1987 (Reg. Sess., 1988), c. 1000, s. 1; 1993, c. 539, s. 1065; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 1; 2002-165, s. 2.19.)

Effect of Amendments. — Session Laws 2002-165, s. 2.19, effective October 23, 2002, substituted "erosion and sedimentation control" for "erosion control" in subsection (b).

§ 153A-362. Revocation of permits.

CASE NOTES

Revocation of Building Permit Because of Zoning Ordinance. — County board of adjustment had the authority to revoke two building permits that had been issued where the building permits were for the construction of two billboards that were in violation of a county zoning ordinance that did not permit construction of the billboards in the area zoned for agricultural use. E. Outdoor, Inc. v. Bd. of Adjustment, — N.C. App. —, 564 S.E.2d 78, 2002 N.C. App. LEXIS 582 (2002).

OPINIONS OF ATTORNEY GENERAL

Failure to Obtain Air Quality Permit Prior to Undertaking Construction Activities. — This section did not require a county inspections department to revoke a building permit issued for the construction of an asphalt plant where the permittee failed to obtain an air quality permit from the Division of Air Quality prior to undertaking some construction activities at the facility site. See opinion of Attorney General to Grover Sawyer, Deputy Commissioner, Chief Engineer, North Carolina Department of Insurance, 2001 N.C. AG LEXIS 18 (5/22/2001).

Chapter 158.

Local Development.

Article 2.

Economic Development Commissions.

§ 158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

Editor's Note. — Session Laws 2001-424, ss. 20.10(a) and (b), as amended by Session Laws 2002-126, s. 13.6, provide for the allocation of funds appropriated in Session Laws 2001-424 to the Department of Commerce for Regional Economic Development Commissions to the following Commissions: 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. A series of steps is set out for determining the allocation to each Commission. For the 2002-2003 fiscal year, provision is made for a reduction in the appropriation of allocated funds.

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed.

Session Laws 2002-126, s. 13.9, as amended by Session Laws 2002-159, s. 76(b), provides: "The Kenan-Flagler Business School ("Business School") of the University of North Carolina at Chapel Hill shall study the effectiveness of the economic development activities of the North Carolina Department of Commerce ("Commerce") and the Regional Economic Development Commissions ("Commissions"). In conducting its study the Business School shall work with Commerce and the Commissions to do the following:

"(1) Identify how Commerce and the Commissions can improve communication, implement a more coordinated and efficient recruitment and retention effort throughout the State, and avoid duplication of effort,

"(2) Establish specific performance measures and outcomes relevant to the mission, goals, and objectives of Commerce and the Commissions,

"(3) Develop a "scorecard" that can be used to measure the extent to which Commerce and the Commissions have achieved their goals, objectives, and outcomes, and

"(4) Recommend a performance-based funding mechanism that will inform the General Assembly's decisions regarding appropriations to Commerce and the Commissions.

"The Business School also may include in its study and recommendations any other information it deems relevant to the study and its intent.

"The Business School shall report its findings and recommendations to the members of the

General Assembly and to the Fiscal Research Division by March 15, 2003."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-180, ss. 20.1 to 20.7, establishes a Legislative Regional Economic Development Commission Reporting Requirements Study Commission, for the purpose of studying the current reporting requirements applicable to the seven Regional Economic Development Commissions of the State. The Commission is to make its final report to the 2003 General Assembly upon its convening.

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. — Scotland: 1979, c. 187; (As to Article 3) city of Northwest: 1993, c. 222, s. 3 (fiscal year 1993-94); town of Arlington: 2001-16, s. 6(b) (for fiscal year 2001-2002); (As to Article 3) town of Cedar Point: 1987 (Reg. Sess., 1988), c. 1005; town of Dobbins Heights: 1983, c. 658; town of Duck: 2001-394, s. 1 (for fiscal years 2001-2002, 2002-2003); (As to Article 3) town of Fairview: 2001-428, s. 2 (for fiscal year 2001-2002); town of Jonesville: 2001-16, s. 6(b) (for fiscal year 2001-2002); town of Leland: 1989, c. 564, s. 3; town of Lewisville: (As to Article 3) 1991, c. 116 s. 1; town of Midland: 2000-91, s. 2 (for fiscal year 2000-01); (As to Article 3) town of Millers Creek: 2001-45, s. 2 (for fiscal year 2000-2001); town of Mineral Springs: 1999-175, s. 1 (for fiscal years 1998-1999 and 1999-2000); town of Red Cross: 2002-56, s. 2 (for fiscal years 2001-2003); (As to Article 3) town of Rimertown: 1999-284, s. 2; (As to Articles 3 and 19) town of St. James: 1999-241, s. 1; (As to Article 3) town of Sandy Creek: 1987 (Reg. Sess., 1988), c. 1007, s. 3; (As to Article 3) town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 3 (for fiscal year 1994-95); (As to Article 3) town of Santeetlah: 1987 (Reg. Sess., 1988), c. 1012; (As to Article 3) town of Sawmills: 1987, c. 648; town of Stokesdale: 1989, c. 488 s. 2; town of Whisett (As to Article 3): 1991, c. 684; (As to Article 3) village of Marvin: 1993 (Reg. Sess., 1994), c. 641, s. 2; (As to Article 3) village of St. Helena: 1987 (Reg. Sess., 1988), c. 942, s. 2; (As to Part 1 of Article 3) village of Wesley Chapel: 1998-43, s. 2 (for fiscal year 1998-99).

§ 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. Before a board of county commissioners may reduce appropriations to a school admin-

istrative unit as part of a general reduction in county expenditures required because of prevailing economic conditions, it must do all of the following:

a. Hold a public meeting at which the school board is given an opportunity to present information on the impact of the reduction.

b. Take a public vote on the decision to reduce appropriations to a school administrative unit.

(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; 2002-126, s. 6.7(a).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 6.7(a), effective July 1, 2002, added the last sentence of subdivision (b)(9), and added subdivisions (b)(9)a. and (b)(9)b.

§ 159-15. Amendments to the budget ordinance.

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives revenues that are substantially more or less than the amount anticipated, the governing body may, before January 1 following adoption of the budget, amend the budget ordinance to reduce or increase the property tax levy to account for the unanticipated increase or reduction in revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes. (1927, c. 146, s. 13; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 12; 2001-308, s. 3; 2002-126, s. 30A.2.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 30A.2, effective July 1, 2002, in the first paragraph, added "except as otherwise provided in this section" in the last sentence; and added the second paragraph.

Part 3. Fiscal Control.

§ 159-28. Budgetary accounting for appropriations.

CASE NOTES

Failure to Show Existence of Certificate. — Health board's dismissal of director for the omission a preaudit certificate on contracts was an error, as the board did not establish that the omission could produce disruption of work, a threat to persons or property, or any other serious effect that required immediate action. Steeves v. Scot. County Bd. of Health, — N.C. App. —, 567 S.E.2d 817, 2002 N.C. App. LEXIS 913 (2002).

§ 159-30. Investment of idle funds.

Local Modification. — City of Durham: 1999-101, s. 3; 2002-31, ss. 1-3; Pitt: 1999-48, s. 1; city of Winston-Salem: 1989 (Reg. Sess., 1990), c. 1026; 1991 (Reg. Sess., 1992), c. 951; 1998-36, s. 2; Forsyth Board of County Commissioners: 1998-44, s. 3.

OPINIONS OF ATTORNEY GENERAL

The proposal of a county hospital system to lend money to a separately licensed acute care hospital was authorized by law. See opinion of Attorney General to Granger R. Barrett, Cumberland County Attorney, and Wilson Hayman, Poyner & Spruill, L.L.P., 2002 N.C. AG LEXIS 14 (2/19/02).

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 2. Procedure for Issuing Bonds.

§ 159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1(i), provides: "The times to publish notice of a bond referendum required by G.S. 159-61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section."

Session Laws 2002-21 (Extra Session), s. 1(j), provides: "The provisions of G.S. 159-61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary."

Session Laws 2002-21 (Extra Session), s. 1(l), provides: "Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002. This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002."

Article 5.

Revenue Bonds.

§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General Statutes, but not any other forms of State or local government.

(2) "Revenue bond" means a bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the revenue-producing utility or public service enterprise facilities or systems listed in this subdivision, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by or on the behalf of either the State or a municipality to pay the costs of the undertaking.

A revenue bond project shall be (i) owned or leased as lessee by the issuing unit or (ii) owned by one or more of the municipalities participating in an undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes. If the revenue bond project is owned by one or more municipalities as provided in (ii) of this subdivision, any one or more of the participating municipalities may each be an issuing unit consistent with their agreement to establish a joint undertaking. In addition, any joint agency established by participating municipalities pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes may be an issuing unit without owning the revenue bond project or leasing it as lessee.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with the undertaking; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which the structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

The following facilities or systems may be revenue bond projects under this subdivision:

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.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.

d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.

e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.

g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.

h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.

i. Hospitals and other health-related facilities.

j. Public auditoriums, gymnasiums, stadiums, and convention centers.

k. Recreational facilities.

l. Repealed by Session Laws 2001-474, s. 36, effective November 29, 2001.

m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.

n. Facilities for the use of any agency or agencies of the government of the United States of America.

o. Structural and natural stormwater and drainage systems of all types.

p. In the case of the North Carolina Turnpike Authority, a Turnpike Project, as defined in G.S. 136-89.181, including the planning and design of a Turnpike Project, that is designated by the Authority to be a revenue bond project.

(4) "Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 15; 1975, c. 821, s. 2; 1977, c. 466,

s. 3; 1979, c. 727, s. 4; c. 791; 1983, c. 554, ss. 2-2.2; 1985, c. 639, s. 3; 1987 (Reg. Sess., 1988), c. 976, s. 1; 1989, c. 168, ss. 37, 38; c. 643, s. 4; c. 740, s. 2; c. 780, s. 2; 1991, c. 508, s. 1; 1995 (Reg. Sess., 1996), c. 644, s. 3; 1997-393, s. 3; 1997-426, s. 6; 2001-414, s. 48; 2001-474, ss. 36, 37; 2002-133, ss. 6, 7.)

Editor's Note. —

Session Laws 2001-414, s. 49, as amended by Session Laws 2002-72, provides: "Section 48 of this act [which amended subdivision (3)] does not derogate any existing powers."

Effect of Amendments. —

Session Laws 2002-133, ss. 6, 7, effective October 3, 2002, substituted "a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General Statutes, but not any other forms of State or local government" for "and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government" in subdivision (1); and added subdivision (3)p.

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.

(a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits or, in the case of a joint agency or undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, for the use of the municipalities that established the joint agency or undertaking and for the use of the public and private consumers residing within their corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits or, in the case of two or more municipalities participating in a joint agency or undertaking, when operated primarily for the use of the municipalities that established the joint agency or undertaking, may be operated incidentally for users outside the corporate limits of either the issuing unit or a participating municipality. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed), facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or equipment may be operated for users outside the corporate limits of a municipality that is an issuing unit where the municipality finds that the systems, facilities, or equipment so financed would benefit the municipality or, in the case of two or more municipalities participating in a joint agency or undertaking, where the municipalities that are the issuing units find that the systems, facilities, or equipment so financed would benefit the municipalities that established the joint agency or undertaking.

Revenue bonds may not be issued for the purpose of financing in whole or in part systems or facilities for the transmission or distribution of gas (natural, artificial, or mixed) to users outside the corporate limits of a municipality to whom service is available or will be available within a reasonable time from a local distribution natural gas utility pursuant to a certificate of public convenience and necessity issued by the North Carolina Utilities Commission. A finding by the governing body of a municipality that is an issuing unit that the systems or facilities to be provided by the financing will not provide service to users to whom such service is available or will be available within a reasonable time from a local distribution natural gas utility shall be conclusive upon (i) the expiration of a 45 day period following the making of such finding,

(ii) the mailing by the municipality of a copy of such notice within five days after the making of such finding to any local distribution company certificated to provide service to the area in which the facilities are to be located, and (iii) the absence of a written objection to such finding being mailed by any such certificated local distribution company to the municipality by not later than five days prior to the end of such 45 day period, all such mailings to be properly given or made if sent by United States registered mail, return receipt requested, postage prepaid. Time shall be computed pursuant to G.S. 1A-1, Rule 6(a).

(b) A revenue bond project financed wholly or partially by revenue bonds of the State may be located either within or without the State and, when operated primarily for the State's own use and for users within the State, may be operated incidentally for users outside the State.

(c) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section and G.S. 160A-312, municipalities may acquire sewage collection and disposal systems and water supply and distribution systems located within and without the corporate limits of such municipalities and finance such acquisition with revenue bonds. Further, municipalities may own, maintain and operate such acquired systems, enlarge and improve such acquired systems and finance the enlargement and improvement of such acquired systems with revenue bonds. This subsection applies only to acquisitions by municipalities financed by revenue bonds during the calendar year ending December 31, 1989.

(e) In the case of a Turnpike Project of the North Carolina Turnpike Authority, the Turnpike Project may be located anywhere in the State the Authority is authorized to maintain a Turnpike Project. (1971, c. 780, s. 1; 1973, c. 1325; 1983, c. 554, s. 16; c. 795, s. 5; 1989, c. 168, s. 44; c. 263; 1991, c. 511, s. 1; 2001-414, s. 50; 2001-474, s. 39; 2002-133, s. 8.)

Effect of Amendments. —

Session Laws 2002-133, s. 8, effective October 3, 2002, added subsection (e).

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

Article 2.

Joint Agencies; Municipalities.

Article 2.

Joint Agencies; Municipalities.

§ 159B-27. Taxes; payments in lieu of taxes.

(a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Any administrative building and associated land shall be deemed a project for purposes of this paragraph.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to three and twenty-two hundredths percent (3.22%) of that percentage of all moneys expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) In lieu of an annual franchise or privilege tax, each joint agency shall pay to the State an amount equal to three and twenty-two hundredths percent (3.22%) of the gross receipts from sales of electric power or energy, less receipts from sales of electric power or energy to a vendee subject to tax under G.S. 105-116.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.

(e) The reporting, payment and collection procedures contained in G.S. 105-116 shall apply to the levy herein made.

(f) Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint agency, no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes. (1973, c. 476, s. 193; 1975, c. 186, s. 1; 1977, c. 385, s. 12; 1981, c. 487; 1983, c. 574, s. 10; 1983 (Reg. Sess., 1984), c. 1097, s. 11; 1995, c. 412, s. 17; 2002-120, s. 6.)

Editor's Note. — Session Laws 2002-120, s. 9, contains a severability clause.

Session Laws 2002-159, s. 65, effective October 11, 2002, provides: "It is the intent of the General Assembly that Sections 1 through 7 of S.L. 2002-120 shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of S.L. 2002-120. Nothing in Section 1 through 7 of S.L. 2002-120 shall be construed as a waiver of the sovereign immunity of the State or any other defenses as to any claim for damages, other recovery of funds, including attorneys' fees, or injunctive relief from the State by any unit of local government or political subdivision of the State."

Effect of Amendments. — Session Laws 2002-120, s. 6, effective September 24, 2002, added the last two sentences in subsection (d).

Chapter 159D.

The North Carolina Capital Facilities Financing Act.

Article 1.

Industrial And Pollution Control Facilities Financing.

§ 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 manufac-

turing 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, Generally. — 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.

(d1) Public Hearing, Multiple Projects. — Notwithstanding subsection (d) of this section, in the event the bonds proposed to be issued are to finance more than one project, the public hearing shall be conducted by the agency or by a hearing officer designated by the agency to conduct public hearings. The public hearing may be held at any location designated by the agency. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in each county in which a proposed project is to be located not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and any proposed project in that county, including its general location, and any other information the agency considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. A copy of the notice of public hearing must be mailed to the board of county commissioners of any county in which a proposed project is to be located and to the governing body of any municipality in which a proposed project is to be located.

(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; 2002-172, s. 5.2.)

Editor's Note. — Session Laws 2002-172, s. 5.1, provides: "The General Assembly finds that there are small manufacturing companies in the State that are eligible for industrial development bond financing for capital improvements and expansions, but are not able to take advantage of that financing because of the administrative costs involved. This problem can be addressed by reviving the composite bond program under Chapter 159D of the Gen-

eral Statutes, under which the North Carolina Capital Facilities Finance Agency could combine several series of bonds into a single bond offering, thereby reducing transaction costs and permitting eligible small manufacturers to access tax exempt financing for capital investments. The composite bond program would be facilitated by the changes proposed to Chapter 159D in this part [Part 5 of Session Laws 2002-172] that will streamline the procedures for composite issues by requiring only one public hearing and align the review standard for bonds issued as part of a composite bond program with the standard for bonds issued by county industrial development projects."

Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-172, s. 5.2, effective January 1, 2003, added "Generally" to the subsection (d) heading; and added subsection (d1).

§ 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 credit enhancement, 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; 2002-172, s. 5.3.)

Editor's Note. — Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. —

Session Laws 2002-172, s. 5.3, effective October 31, 2002, inserted "credit enhancement" near the end of subdivision (b)(1).

Article 2.

Private Capital Facilities Finance Act.

§ 159D-37. Definitions.

OPINIONS OF ATTORNEY GENERAL

A charter school is an "institution for elementary and secondary education" within the meaning of this section and, therefore, is eligible for financing pursuant to Article 2, Chapter 159D, G.S. 159D-35 et seq. See opinion of Attorney General to Mr. Brad Sneeden, Deputy Superintendent of Public Instruction, Department of Public Instruction, 2001 N.C. AG LEXIS 37 (10/2/01).

Chapter 159G.

North Carolina Clean Water Revolving Loan and Grant Act of 1987.

Sec.
159G-3. Definitions.
159G-6. Distribution of funds.

§ 159G-3. Definitions.

As used in this Chapter, the following words shall have the meanings indicated, unless the context clearly requires otherwise:

(1) Repealed by Session Laws 1991, c. 186, s. 1.

(2) "Applicant" means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that local government unit. For purposes of the Drinking Water Treatment Revolving Loan Fund established by G.S. 159G-5(d), "applicant" also means a nonprofit water corporation that is incorporated in compliance with Chapter 55A of the General Statutes solely for the purpose of providing community water or community water and wastewater and that is eligible for a federal loan or a federal loan and grant from the Rural Utility Services Division, U.S. Department of Agriculture.

(2a) "Bond rating" means the numerical rating of a local government unit developed by the North Carolina Municipal Council, Inc., or any successor thereto. The rating formula is based on 100 being a theoretically "perfect" local government unit and is an assessment of the creditworthiness of the unit. Local government units with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.

(3) "Clean Water Revolving Loan and Grant Fund" means the fund established in the Department of Environment and Natural Resources to carry out the provisions of this Chapter, with various accounts therein as herein provided.

(4) "Construction costs" means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property.

(5) "Grant" means a sum of money given by the State to an applicant to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum.

(6) "Commission for Health Services" means the Commission for Health Services created by G.S. 130A-29.

(6a) "Debt instrument" means an instrument in the nature of a promissory note executed by an applicant under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms.

(7) "Division of Environmental Health" means the Division of Environmental Health of the Department of Environment and Natural Resources.

(7a) "Economically distressed local government unit" means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A.

(8) "Environmental Management Commission" means the Environmental Management Commission of the Department of Environment and Natural Resources.

(9) "Local Government Commission" means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(10) "Local government unit" means a county, city, town, incorporated village, consolidated city-county, as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, joint agency authorized by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that also provided water and wastewater services off the airport premises before January 1, 1995, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, or the Eastern Band of Cherokee Indians in North Carolina.

(11) Repealed by Session Laws 1991, c. 186, s. 1.

(12) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Water Quality with respect to receipt of applications for revolving loans and grants for wastewater systems.

(13) "Revolving construction loan" means a sum of money loaned by the State to an applicant to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of the applicant to repay such sum, the proceeds of such repayment to be deposited in the fund from which the loan was made.

(14) "Revolving emergency loan" means a sum of money loaned by the State to a local government unit upon a certification, as provided in this Chapter, of a serious public health hazard, with an obligation on the part of such unit to repay such sum.

(15) "Revolving loan" includes a revolving construction loan and an emergency loan.

(15a) "State" means the State of North Carolina.

(15b) "State Treasurer" means the Treasurer of the State elected pursuant to Article III, Section 7 of the Constitution or his designated representative.

(16) "Wastewater Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for wastewater treatment work and wastewater collection system projects.

(17) "Wastewater collection system" means a unified system of pipes, conduits, pumping stations, force mains, and appurtenances other than interceptor sewers, for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments or any other buildings, and owned by a local government unit.

(18) "Wastewater treatment works" means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, phosphorous removal equipment, pumping, power and other equipment and their appurtenances.

(19) "Water Supply Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for water supply system projects.

(20) "Water supply system" means a public water supply system consisting of facilities and works for supplying, treating and distributing potable water including, but not limited to, impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the system to other public water supply systems, pumping equipment and all other necessary appurtenances, equipment and structures. (1987, c. 796, s. 1; 1989, c. 727, s. 206; c. 770, s. 36; c. 799, s. 13; 1989 (Reg. Sess., 1990), c. 1004, s. 58; 1991, c. 186, s. 1; 1995, c. 461, s. 11; 1995 (Reg. Sess., 1996), c. 644, s. 4; c. 743, s. 23; 1997-443, s. 11A.123; 1997-458, s. 5.2; 1999-213, s. 2; 1999-329, s. 12.1; 2002-176, s. 5.)

Effect of Amendments. — Session Laws 2002-176, s. 5, effective October 31, 2002, deleted "or" preceding "joint agency created pursuant to" and added "or the Eastern Band of Cherokee Indians in North Carolina" near the end of subdivision (10).

§ 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 providd 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 Secretary of Environment and Natural Resources.

(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 Secretary of Environment and Natural Resources certifies either that a serious public health hazard, related to the water supply system, or that a drought emergency is present or imminent in a community.

(4) Inter-Account Transfers. — The Department of Environment and Natural Resources may transfer funds from the General Water Supply Revolving Loan and Grant Account to the Emergency Water Supply revolving Loan Account in the event that the Secretary of Environment and Natural Resources certifies that a drought emergency exists and that additional emergency funds are needed to assist water supply systems that are experiencing a drought emergency.

(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; 2002-176, s. 7.)

Effect of Amendments. —

Session Laws 2002-176, s. 7, effective October 31, 2002, substituted "Secretary of Environment and Natural Resources" for "Division of Environmental Health" in the introductory paragraph of subsection (c); substituted "Secretary of Environment and Natural Resources certifies either that a serious public health hazard, related to the water supply system, or that a drought emergency is present" for "Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present" in subdivision (c)(3); and added subdivision (c)(4).

Chapter 159I.

Solid Waste Management Loan Program and Local Government Special Obligation Bonds.

§ 159I-1. Short title.

This Chapter may be cited as the Solid Waste Management Loan Program and Local Government Special Obligation Bond Act. (1989, c. 756, s. 1; 2002-72, s. 21.)

Effect of Amendments. — Session Laws 2002-72, s. 21, effective August 12, 2002, substituted "Solid Waste Management Loan Program and Local Government Special Obligation Bond Act" for "North Carolina Solid Waste Management Loan Program."

Chapter 160A.

Cities and Towns.

Article 1.

Definitions and Statutory Construction.

§ 160A-4. Broad construction.

OPINIONS OF ATTORNEY GENERAL

Condemnation of Property to Improve Road. — A proposed escrow agreement between a town and various property owners to collect and dispose of funds in order to acquire right of way, by condemnation or otherwise, in order to widen and improve a road was not prohibited by this section or public policy. See opinion of Attorney General to William C. Coward, Coward, Hicks & Siler, P.A., 2000 N.C. AG LEXIS 28 (4/10/2000).

ARTICLE 3.

Contracts.

§ 160A-20. Security interests.

(a) Units of local government, as defined in subsection (h), may purchase or finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Units of local government, as defined in subsection (h), may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such construction or repair.

(c) Units of local government, as defined in subsection (h), may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such advance funding are invested pending disbursement.

(d) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any fixture, improvement, project, or property financed or purchased pursuant to such contract.

(e) A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(e1) A nonprofit corporation or association operating or leasing a public hospital may only enter into a contract pursuant to this section if the nonprofit corporation or association will have an ownership interest in the property being financed, including a leasehold interest, and the security interest granted in such property being financed shall only be to the extent of such property interest. In addition, any contract entered into by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority which owns such hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity.

(f) No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) As used in this section, the term "unit of local government" means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

(3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, except that the authority granted by this subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(6) A local school administrative unit whose board of education is authorized to levy a school tax.

(6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).

(9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.

(10) A regional natural gas district, as defined by Article 28 of this Chapter.

(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.

(12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39. (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2; 1997-380, s. 3; 1997-426, s. 7; 1997-426, s. 7.1; 1998-70, s. 1; 1998-117, s. 1; 1999-386, ss. 1, 2; 2001-414, s. 52; 2002-161, s. 10.)

Editor's Note. —
Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Effect of Amendments. —
Session Laws 2002-161, s. 10, effective January 1, 2003, and applicable to contracts entered into on or after that date, in subdivision (h)(5a), substituted "January 1, 1995, except that the authority granted by this subdivision" for "January 1, 1995; provided that the authority granted by this section"; and inserted subdivisions (h)(6a) and (6b).

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 November 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; 2002-159, s. 52.)

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1.(d), provides: "The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A-23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002." For additional provisions pertaining to the 2002 primary election, see the Editor's notes under G.S. 163-1.

Effect of Amendments. —

Session Laws 2002-159, s. 52, effective October 11, 2002, substituted "November 2002" for "July 2002" in the last paragraph of subsection (d).

ARTICLE 4A.

Extension of Corporate Limits.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

Legal Periodicals. —

For comment, "'Caught Between a Rock and a Hard Place:' Fringe Landowners 'Can't Get No Satisfaction.' Is it Time to Rethink Annexation Policy in North Carolina?," see 24 Campbell L. Rev. 317 (2002).

CASE NOTES

Map Requirement Met. — Annexation report complied with statutory map requirements where the map indicated the current town limits, the area of proposed annexation, and the current town limits of satellite annexation, as well as major roads and property boundaries; there was no requirement that the report contain a sealed map where the town did not plan to extend water and sewer into an annexed area. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Additional Services Not Required. — Annexation report complied with statutory requirements where it stated that no additional police officers were required by the annexation and that roads would continue to be maintained by the State; evidence supported the town's statements that additional police officers were not required and that the State would continue to provide road maintenance. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Financing Statement Not Required. — Town did not need to set out a method for the financing of additional services in its annexation report where the town's statement that no additional services were required was supported by competent evidence in the record; a financing statement was required only if there was to be an extension of services. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

§ 160A-36. Character of area to be annexed.

CASE NOTES

III. Tests Under Subsection (c).

III. TESTS UNDER SUBSECTION (c).

Tax Records and Land Use Maps Are Proper Basis for Use Calculations. — Tax records and land use maps have been approved as accepted methods designed to provide reasonably accurate results for calculating the land use requirements in G.S. 160A-36 for the annexation of property. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

§ 160A-37. Procedure for annexation.

CASE NOTES

Property Owner Not Materially Prejudiced by Illegible Map. — Although the public notice provided by town for public hearing on annexation and printed in newspaper included an illegible map, the property owner was not materially prejudiced, since the public notice

adequately described the property at issue; further, the property owner was not materially prejudiced by the denial of its request for a postponement of the public hearing because it had ample notice of the proposed annexation and an opportunity to be heard. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

New Public Hearing Not Required. — Although town's annexation report failed to fully set forth the town's policies regarding sanitation services, the trial court did not have to order a new public hearing, but could remand the issue to the town to more fully and adequately set forth the town's policy, and the proposed extension of such services into the area of annexation; a municipal governing board has the authority to amend an annexation report to make changes in the plans for serving the area proposed to be annexed without another public hearing as long as the changes meet the statutory requirements and were part of the original notice of public hearing. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Anthony v. City of Shelby, — N.C. App. —, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Contiguity Requirement Met. — Annexation areas that were at least one-eighth contiguous with the municipal boundary and whose portions were connected by street right-of-way corridors, complied with the requirements of G.S. 160A-48(b). Anthony v. City of Shelby, — N.C. App. —, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

§ 160A-49. Procedure for annexation.

CASE NOTES

Identification. — Annexation resolution which identified the area under consideration for annexation as a certain township by the official mapping of the county fulfilled the requirement of G.S. 160A-49(i) to identify the area under consideration for annexation. Anthony v. City of Shelby, — N.C. App. —, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

Public informational meeting. — City substantially complied with the requirement of G.S. 160A-49(c1) that property owners be given the opportunity to ask questions and receive answers regarding a proposed annexation, when the trial court found all persons attending a public informational meeting were given the opportunity to ask one or more questions to which city representatives responded. Anthony v. City of Shelby, — N.C. App. —, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

§ 160A-50. Appeal.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Anthony v. City of Shelby, — N.C. App. —, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58.1. Petition for annexation; standards.

(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Newton, Sanford, Salisbury, and Southport, and the Towns of Catawba, Maiden, Midland, Swansboro, and Warsaw.

(b1) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) Repealed by Session Laws 2001-37, s. 1, effective April 26, 2001.

This subsection applies to the Cities of Marion, Oxford, and Rockingham and the Towns of Calabash, Catawba, Dallas, Godwin, Louisburg, Mocksville, Pembroke, Rutherfordton, and Waynesville only.

(b2) A city may annex a noncontiguous area that does not meet the standard set out in subdivision (b)(2) of this section if the city has entered into an annexation agreement pursuant to Part 6 of this Article with the city to which a point on the proposed satellite corporate limits is closer and the agreement states that the other city will not annex the area but does not say that the annexing city will not annex the area. The annexing city shall comply with all other requirements of this section.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition.

(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated. (1973, c. 1173, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 4; 1997-2, s. 1; 2001-37, s. 1; 2001-72, s. 1; 2001-438, s. 1; 2002-121, s. 1.)

Local Modification. — Brunswick: 2001-478, s. 1 (as to subdivision (b)(2)); Municipalities located wholly or partly in Guilford: 1987 (Reg. Sess., 1988), c. 1009, s. 6; city of Asheboro: 1998-203, s. 1; city of Brevard: 1987, c. 254, s. 2; 2001-105, s. 2 (as to subdivision (b)(5)) city of Durham: 1987, c. 606; city of Greensboro: 1997-344, s. 1; city of Greensville: 1999-283, s. 1; city of Henderson: 1996, 2nd Ex. Sess., c. 3, s. 1; city of Hickory: 1987, c. 179; 1999-208, s. 1; 1999-456, s. 49; city of Mooresville, 1995, c. 82, s. 1; city of Mount Airy: 1999-232, s. 1; city of Mount Holly: 1985, c. 110; city of New Bern: 1989, c. 382, s. 1; 1993 (Reg. Sess., 1994), c. 605, s. 3; city of Newton: 2002-50, s. 1 (as to subdivision (b)(2)); city of Raleigh: 1998-200, s. 1; city of Reidsville: 1997-343; city of Rockingham: 1995 (Reg. Sess., 1996), c. 654, s. 1; city of Statesville: 1989 (Reg. Sess., 1990), c. 882, s. 1; town of Apex: 1993, c. 312, s. 3; 1995, c. 82, s. 1; town of Banner Elk: 1998-77; town of Beaufort: 1997-432, s. 1; 1995, c. 82, s. 1; town of Brookford: 1999-208, s. 1; 1999-456, s. 49; town of Canton: 1983, c. 301; 1985 (Reg. Sess., 1986), c. 979; 1997-2, s. 1; town of Clayton: 1993, c. 63, s. 1; 1999-10, s. 1; town of Cornelius: 1999-103, s. 1; town of Davidson: 1999-85, s. 1; town of Edenton: 1995 (Reg. Sess., 1996), c. 707; town of Fuquay-Varina: 1999-304, s. 1; town of Holly Springs: 1991, c. 243 (as to annexation ordinances adopted before July 1, 1993); town of Hope Mills: 1997-151, s. 1; town of Huntersville: 1999-24, s. 1; town of Kenly; 1987, c. 67; town of Knightdale: 1987, c. 234; town of Madison (subsection (b)(2) does not apply to Madison): 1997-251, s. 2; town of Mayodan: 2001-405 (as to subdivisions (b)(4)) and (b)(5); town of Mooresville: 1997-219, ss. 2, 3; town of Morehead City: 1998-42; town of Oak Ridge: 1998-113, s. 1; town of Pittsboro: 1987 (Reg. Sess., 1988), c. 1023, s. 4.1; town of Pleasant Garden: 1997-344, s. 1; towns of

Summerfield and Leland: 1997-249; town of Trent Woods: 1989, c. 382, s. 1; town of Troy: 1993, c. 159, s. 2; town of Wallace: 1995 (Reg. Sess., 1996), c. 692, s. 1; town of Wake Forest: 1989 (Reg. Sess., 1990), c. 882, s. 2(a); 1997-432, s. 1(a), (b); town of Weaverville: 1989, c. 181, s. 1 (applicable with respect to annexation ordinances adopted on or before June 30, 1990); 1997-151, s. 2; town of Winterville: 2001-77, s. 1 (as to subdivision (b)(2)); village of Marvin: 2002-140, s. 1 (as to subdivision (b)(5)).

Editor's Note. — Session Laws 2002-121, s. 1, provides that subdivision (b)(5) does not apply to the cities of Claremont, Concord, Conover, Newton, Sanford, and Southport, and the Towns of Maiden, Midland, Swansboro, and Warsaw. Session Laws 1997-2, s. 1, provided that subdivision (b)(5) did not apply to the town of Catawba, and Session Laws 2001-72, s. 1 provided the subdivision did not apply to the city of Salisbury. Since subdivision (b)(5) does not apply to more than 10 jurisdictions, the second paragraph of that subdivision has been added at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2002-121, s. 1, effective September 24, 2002, added the second paragraph of subdivision (b)(5). See Editor's note.

Article 5.

Form of Government.

Part 1. General Provisions.

§ 160A-63. Vacancies.

Local Modification. — Wilmington/New Hanover County Consolidated Government: 1987, c. 643; city of Elizabeth City: 2001-227, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c. 1009; city of Monroe: 2000-35, s.1; city of Roanoke Rapids: 1995, c. 34, s. 1; city of Trinity: 1997-44, s. 3 (contingent on referendum); town of Connelly: 1989, c. 528, s. 1; town of Franklinton: 1993, c. 160, s. 1; town of Littleton: 2002-20, s. 1; town of Tarboro: 1995, c. 73, s. 1.

Part 2. Mayor and Council.

§ 160A-67. General powers of mayor and council.

CASE NOTES

City council, and not the city, was responsible for the government and general management of the city, and, thus, had final policymaking authority; accordingly, the city could not be held liable for its alleged retaliation against the storage business regarding the billing of it for water and sewer services as the entity liable had to be found liable for its policy or custom that violated the rights of another and the city was not responsible for making policy or customs. United States Cold Storage, Inc. v. City of Lumberton, — F.3d —, 2002 U.S. App. LEXIS 8392 (4th Cir. May 2, 2002).

Article 7.

Administrative Offices.

Part 4. Personnel.

§ 160A-168. Privacy of employee personnel records.

OPINIONS OF ATTORNEY GENERAL

Attorney-Client Communications to City on Personnel Matters. — Written attorney-client communications to a city (including the city manager and city council) on specific personnel matters related to an employee that are more than three years old, and which are confidential under G.S. 160A-168(a), are not public records; by its specific terms, G.S. 160A-168(a) supersedes the requirement in G.S. 132-1.1 that privileged attorney-client communications must be disclosed three years after they are received. See opinion of Attorney General to Mr. Grady Joseph Wheeler, Jr., Esq., Attorney, 2001 N.C. AG LEXIS 15 (5/30/2001).

Article 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

CASE NOTES

III. Other Specific Ordinances.

III. OTHER SPECIFIC ORDINANCES.

Regulation of Swine Farms. — County's ordinances attempting to regulate swine farms were invalid because the state had established a comprehensive scheme of regulation that indicated the General Assembly's intention to regulate this area on a state-wide basis, leaving no room for local regulation. Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

§ 160A-176.2. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only. (1991, c. 494, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 801; 1993, c. 67, s. 5; c. 125, s. 2; 1993 (Reg. Sess., 1994), c. 625, s. 1; 1997-48, s. 1; 2002-141, s. 1.)

Effect of Amendments. — Session Laws 2002-141, s. 1, effective October 3, 2002, in subsection (b), added towns of Duck and Oak Island to, and deleted towns of Long Beach and Yaupon Beach from, the list of localities to which subsection (a) of the section apply.

§ 160A-193. Abatement of public health nuisances.

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

(b) The expense of the action is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another. (1917, c. 136, subch. 7, s. 4; C.S., s. 2800; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 20; 2001-448, s. 1; 2002-116, s. 3.)

Effect of Amendments. — Session Laws 2002-116, s. 3, effective September 17, 2002, inserted the second sentence in subsection (a).

Article 9.

Taxation.

§ 160A-209. Property taxes.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each city in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the city under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each city may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the city.

(2) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.

(3) Civil Disorders. — To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

(1) Administration. — To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.

(2) Air Pollution. — To maintain and administer air pollution control programs.
(3) Airports. — To establish and maintain airports and related aeronautical facilities.
(4) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
(5) Animal Protection and Control. — To provide animal protection and control programs.
(5a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.
(6) Auditoriums, Coliseums, and Convention Centers. — To provide public auditoriums, coliseums, and convention centers.
(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control and flood and hurricane protection.
(8) Cemeteries. — To provide for cemeteries.
(9) Civil Defense. — To provide for civil defense programs.
(9a) Community Development. — To provide for community development as authorized by G.S. 160A-456 and 160A-457.
(10) Debts and Judgments. — To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.
(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12.
(10c) Drainage. — To provide for drainage projects or programs in accordance with Chapter 156 of the General Statutes or in accordance with this Chapter.
(11) Elections. — To provide for all city elections and referendums.
(12) Electric Power. — To provide electric power generation, transmission, and distribution services.
(13) Fire Protection. — To provide fire protection services and fire prevention programs.
(14) Gas. — To provide natural gas transmission and distribution services.
(15) Historic Preservation. — To undertake historic preservation programs and projects.
(15a) Housing. — To undertake housing projects as defined in G.S. 157-3, and urban homesteading programs under G.S. 160A-457.2.
(16) Human Relations. — To undertake human relations programs.
(17) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.
(17a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.
(18) Jails. — To provide for the operation of a jail and other local confinement facilities.
(19) Joint Undertakings. — To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.
(20) Libraries. — To establish and maintain public libraries.
(21) Mosquito Control.
(22) Off-Street Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.
(24) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
(25) Planning. — To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.
(26) Police. — To provide for law enforcement.
(26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
(27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation.
(27a) Railroad Corridor Preservation. — To acquire property for railroad corridor preservation.
(27b) Senior Citizens Programs. — To undertake programs for the assistance and care of its senior citizens.
(28) Sewage. — To provide sewage collection and treatment services as defined in G.S. 160A-311(3).
(29) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
(30) Streets. — To provide for the public streets, sidewalks, and bridges of the city.
(31) Traffic Control and On-Street Parking. — To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.
(31a) Urban Redevelopment. — To provide for urban redevelopment.
(32) Water. — To provide water supply and distribution services.
(33) Water Resources. — To participate in federal water resources development projects.
(34) Watershed Improvement. — To undertake watershed improvement projects.

(d) Property taxes may be levied for one or more of the purposes listed in subsection (c) up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars' ($100.00) appraised value of property subject to taxation.

(e) With an approving vote of the people, any city may levy property taxes for any purpose for which the city is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (d).

The city council may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other city referendum or city election, but may not be otherwise held (i) on the day of any federal, State, district, or county election already validly called or scheduled by law at the time the tax referendum is called, or (ii) within the period of time beginning 30 days before and ending 10 days after the day of any other city referendum or city election already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the same board of elections that conducts regular city elections. A notice of referendum shall be published in accordance with G.S. 163-287. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall the City/Town of _____ be authorized to levy annually a property tax at a rate not in excess of _____ cents on the one

hundred dollars ($100.00) value of property subject to taxation for the purpose of _____?

(2) Shall the City/Town of _____ be authorized to levy annually a property tax at a rate not in excess of that which will produce $ _____ for the purpose of _____?

(3) Shall the City/Town of _____ be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of _____?

If a majority of those participating in the referendum approve the proposition, the city council may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the city council. The council shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the council.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Cities in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitations set out in subsection (d) at any appropriate level and are not subject to the former voted rate limitation.

(f) With an approving vote of the people, any city may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other city referendum or election, but may not be otherwise held (i) on the day of any federal, State, district, or county election, or (ii) within the period of time beginning 30 days before and ending 30 days after the day of any other city referendum or city election. The election shall be conducted by the same board of elections that conducts regular city elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to the City/Town of _____ be increased from _____ on the one hundred dollars ($100.00) value of property subject to taxation to _____ on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the city.

(g) With respect to any of the categories listed in subsections (b) and (c) of this section, the city may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(h) This section does not authorize any city to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other

portions of the General Statutes or by city charters. (1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C.S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1; 1973, c. 426, s. 31; c. 803, s. 2; 1975, c. 664, s. 7; 1977, c. 187, s. 2; c. 834, s. 2; 1979, c. 619, s. 5; 1979, 2nd Sess., c. 1247, s. 21; 1981, c. 66, s. 1; 1983, c. 511, ss. 3, 4; c. 828; 1985, c. 665, ss. 4, 7; 1987, c. 464, s. 6; 1989, c. 600, s. 8; 1989 (Reg. Sess., 1990), c. 1005, ss. 6, 7; 1991 (Reg. Sess., 1992), c. 896, s. 2; 2002-159, s. 50(b); 2002-172, s. 2.4(b).)

Editor's Note. —

Session Laws 2002-172, s. 7.1, contains a severability clause.

Effect of Amendments. — Session Laws 2002-159, s. 50(b), effective October 11, 2002, inserted "G.S. 158-7.1 and" in subdivision (c)(10b).

Session Laws 2002-172, s. 2.4(b), effective October 31, 2002, inserted "G.S. 158-7.1 and" in subdivision (c)(10b).

§ 160A-214.1. Uniform penalties for local meals taxes.

Editor's Note. — Session Laws 2001-264, s. 3, as amended by Session Laws 2002-72, s. 3, provides: "Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

§ 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) **(Effective until February 1, 2003)** This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties.

(g) **(Effective February 1, 2003)** This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties. (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; 2001-11, s. 2; 2001-365, s. 3; 2001-434, s. 9; 2001-439, s. 18.1; 2002-94, s. 4; 2002-95, s. 3; 2002-138, s. 2; 2002-139, s. 2; 2002-159, s. 62.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until February 1, 2003. The second version of subsection (g) set out above is effective February 1, 2003.

Editor's Note. —

Session Laws 2002-94, s. 4 inserted "and Seven Devils District W" in subsection (g). Session Laws 2002-159, s. 62, repealed that amendment, and thus G.S. 160A-215(g) is set out without giving effect to Session Laws 2002-94, s. 4.

Tourism Promotion and Development. — Session Laws 2001-162, 2001-305, 2001-321, 2001-365, 2001-381, 2001-434, 2001-439, 2001-480, as amended by Session Laws 2002-36, 2001-484, 2002-94, 2002-95, 2002-138 and 2002-139 authorize the affected localities (the counties of Anson, Buncombe, Dare, Durham, Cabarrus, Carteret, Cumberland, Montgomery, Pender, Richmond, Rowan, Stanly, and Vance, the cities of Gastonia, Kings Mountain, Lincolnton, Monroe, North Topsail Beach, and Wilmington, the towns in Avery county and the towns of Banner Elk, Beech Mountain, Carolina Beach, Carrsboro, Jonesville, Kure Beach, Selma, Smithfield, Wilkesboro, and Wrightsville Beach, and the Township of Averasboro in Harnett County) to levy additional occupancy taxes for tourism promotion and development.

Effect of Amendments. —

Session Laws 2002-95, s. 3, effective August 28, 2002, inserted "Jonesville" in subsection (g).

Session Laws 2002-138, s. 2, effective February 1, 2003, in subsection (g), added Carolina Beach, Kure Beach, and Wrightsville Beach to the list of localities to which the section applies.

Session Laws 2002-139, s. 2, effective October 3, 2002, in subsection (g), added Wilmington to the list of localities to which the section applies.

Article 10.

Special Assessments.

§ 160A-217. Petition for street or sidewalk improvements.

Local Modification. — City of Beech Mountain: 1995, c. 133, s. 1; City of Laurenburg: 2000-13, s. 1; city of Oxford: 1993, c. 240, s. 1; town of Ahoskie: 1987, c. 261; 1987 (Reg. Sess., 1988), c. 962; town of Carrboro: 1987, c. 476, s. 1; town of Tabor City: 2002-13, s. 1; town of Wake Forest: 1989, c. 347, s. 1.

Article 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — (As to Article 12) Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1, 2; (As to Article 12) Burke: 1987 (Reg. Sess., 1988), c. 1002; Burlington: 1989, c. 6; Cherokee: 1983 (Reg. Sess., 1984), c. 939; Clay: 1983, c. 353; (As to Article 12) Cleveland: 1995, c. 201, s. 1; Cumberland: 1983 (Reg. Sess., 1984), c. 1079; Craven: 1985, c. 13; Dare: 1987, c. 241; Duplin: 1989, c. 411, ss. 1.1, 1.2; 1989 (Reg. Sess., 1990), c. 1006, s. 1; Edgecombe: 1981, c. 971; Gaston: 1983, c. 405; Graham and Graham County Industrial Development Authority: 1985 (Reg. Sess., 1986), c. 824; Halifax: 1987, c. 238; Harnett: 1985, c. 16; Haywood and Jackson: 1981, c. 137; Johnston: 1989, c. 597, s. 1; Jones: 1983 (Reg. Sess., 1984), c. 960; Lee: 1987 (Reg. Sess., 1988), c. 933; (As to Article 12) 2002-81, s. 1; Lenoir: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 1002; 2000-48, s. 2; Macon: 1979, c. 235; 1989 (Reg. Sess., 1990), c. 998; Madison: 1981, c. 174; McDowell: 1987 (Reg. Sess., 1988), c. 909; 1989 (Reg. Sess., 1990), c. 833, s. 2; Pamlico: 1985, c. 386; 1987, c. 214; (As to Article 12) Pasquotank: 1979, c. 129; 1991, c. 61; Pender: 1989, c. 503, s. 1; 1989 (Reg. Sess., 1990), c. 847, s. 1; 1993, c. 52, s. 1; Pitt: 1983 (Reg. Sess., 1984), c. 942; Rowan: 1987, c. 157; Sampson: 1985 (Reg. Sess., 1986), c. 894; c. 943, s. 2; (As to Article 12) Sanford: 1995, c. 154, s. 1; Scotland: 1987, c. 57; Swain: 1981, c. 137; Transylvania: 1989, c. 4; (As to Article 12) Tyrrell: 1987, c. 9; 2001-32; Washington: 1979, 2nd Sess., c. 1120; 1985, c. 134; Wayne: 1987 (Reg. Sess., 1988), c. 1006, s. 7; (As to Article 12) 1997-170, s. 1; city of Asheboro: 1987, c. 593; city of Asheville: 1979, c. 317; 1981, c. 631; 1985, c. 721; city of Bessemer City: 1995 (Reg. Sess., 1996), c. 563, s. 1; city of Brevard: 1985, c. 79; 1987 (Reg. Sess., 1988), c. 905; 1999-8, s. 1; (As to Article 12) 1995 (Reg. Sess., 1996), c. 671, s. 1; city of Burlington: 1985 (Reg. Sess., 1986), c. 829; 1987, c. 121; 1989 (Reg. Sess., 1990), cc. 831, 832; (As to Article 12) 1991, c. 198; 1993, c. 276, s. 1; c. 277, s. 3; 1995 (Reg. Sess., 1996) c. 610, s. 1; 1997-445, s. 2; (As to Article 12) 2001-190, s. 4; city of Charlotte: (As to Article 12) 1981, c. 55; 1983, c. 92; 2000-26, s. 1; city of Clinton: 1985 (Reg. Sess., 1986), c. 943, s. 2; city of Durham: 1987, c. 756, s. 4; city of Elizabeth City: 1979, c. 129; city of Kinston: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 918; c. 1002; (As to Article 12) 1993, c. 265, s. 1; 2000-48, s. 2; city of Lenoir: 1985, c. 493; (As to Article 12) city of Lincolnton: 1995, c. 57, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Morganton: 1987, c. 265, s. 2; 1987 (Reg. Sess., 1988), c. 1002; city of Mount Airy: 1985, c. 282; 1998-82; city of New Bern: 1998-29; city of Oxford: 1989 (Reg. Sess., 1990), c. 833, s. 1; city of Raleigh: 1997-39, s. 1; city of Roanoke Rapids: 1997-39, s. 1; (As to Article 12) 1991, c. 197; city of Salisbury: 1987, c. 205, s. 1; city of Shelby: 1999-5, s. 1; city of Statesville: 1987, c. 265, s. 2; 1989, c. 241, s. 1; (As to Article 12) city of Thomasville: 2002-53, s. 1; city of Washington: 1983 (Reg. Sess., 1984), c. 941; (As to Article 12) 1993, c. 133, s. 1; city of Whiteville: 1987 (Reg. Sess., 1988), c. 1018, s. 1; city of Wilson: 1983, c. 748; town of Ayden: 1991, c. 58; town of Black Creek: 1985, c. 286; town of Cerro Gordo: 1995 (Reg. Sess. 1996), c. 708; town of Carrboro: 1987, c. 476, s. 1; 1989, c. 97, s. 1; town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 11.1; town of Elkin: 1997-130; 1997-131; (As to Article 12) town of Fairmont: 2001-2; (As to Article 12) town of Faison: 1998-40, s. 3; town of Garner: 1989, c. 270, s. 1; town of Greenevers: 1985, c. 34; town of Kernersville: 1987 (Reg. Sess., 1988), c. 920; 1989 (Reg. Sess., 1990), c. 983; (As to Article 12) 2001-80; (As to Article 12) town of Maxton: 1995 (Reg. Sess.,

1996), c. 576, s. 1; town of Pilot Mountain: 1985, c. 291, ss. 6, 8; (as to Article 12) town of Red Springs: 1995, c. 203, s. 1; town of Tabor City: 1987 (Reg. Sess., 1988), c. 919; town of Tryon: 1987, c. 56; town of Wake Forest: 1985, c. 195; (As to Article 12) town of Wallace: 1998-40, s. 1; town of Waynesville: 1997-139, s. 1; village of Pinehurst: 1989, c. 375, ss. 1, 1.1; (As to Article 12) Asheville-Buncombe Technical Community College: 2000-99, s. 1; (As to Article 12) Burlington City Board of Education: 1993 (Reg. Sess., 1994), c. 639, s. 1; Clinton-Sampson Agri-Civic Center Commission: 1985 (Reg. Sess., 1986), c. 943, s. 2; Foothills Regional Airport Authority: 2000-9, s. 7; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, 2nd Ex. Sess., c. 16, s. 1; (As to Article 12) Wilkes County Board of Education: 2001-58.

§ 160A-272. Lease or rental of property.

Local Modification. — Cabarrus: 2000-88, s. 2; Columbus: 1995 (Reg. Sess., 1996), c. 709, s. 1; Duplin: 1987, c. 50; 1987 (Reg. Sess., 1988), c. 1006, s. 6; Lincoln: 1983 (Reg. Sess., 1984), c. 944; 1989, c. 411, s. 1; Montgomery: 2001-485, s. 3.1; Pasquotank: 1991, c. 382; Sampson: 1985 (Reg. Sess., 1986), c. 943, s. 2; Tyrrell: 1987, c. 781, s. 1.1; Wake: 1979, c. 275; Wilson: 1983, c. 239; city of Asheboro: 1989 (Reg. Sess., 1990), c. 867; city of Charlotte: 2000-26, s. 1; city of Concord: 1985, c. 355, as amended by 2000-88, s. 2; city of Gastonia: 1991, c. 557, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Statesville: 1983 (Reg. Sess., 1984), c. 940; 1987 (Reg. Sess., 1988), c. 883; town of Beaufort: 1979, c. 371; town of Columbia: 1987, c. 781, s. 1.1; town of Hope Mills: 1985, c. 285; town of Kenansville: 1987, c. 50; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Matthews: 2001-102; town of Newport: 1998-30; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Duplin County Board of Education: 1987, c. 50; Elizabeth City - Pasquotank County Airport Authority: 1991, c. 26; Goldsboro-Wayne Airport Authority: 1987 (Reg. Sess., 1988), c. 1006, s. 5; Warren Field Airport Commission: 2002-84, s. 1.

Article 13.

Law Enforcement.

§ 160A-281. Policemen appointed.

OPINIONS OF ATTORNEY GENERAL

Company police officers were not properly municipal police officers of a town and could not hold themselves out as town officers or enforce state law on the streets and highways of the town. See opinion of Attorney General to Mr. G. Dewey Hudson, District Attorney, Fourth Prosecutorial District, 2001 N.C. AG LEXIS 4 (2/23/2001).

§ 160A-288. Cooperation between law-enforcement agencies.

Cross References. — As to applicabillity to special peace officers employed by the Department of Environment and Natural Resources, see G.S. 113-28.2A.

OPINIONS OF ATTORNEY GENERAL

A company operating a private prison cannot be a party to a "mutual aid agreement" authorized by this section. See opinion of Attorney General to Senator Frank W. Ballance, Jr. and Representative E. David Redwine, 2001 N.C. AG LEXIS 5 (3/28/2001).

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost.

OPINIONS OF ATTORNEY GENERAL

A company operating a private prison cannot be a party to a "mutual aid agreement" authorized by this section. See opinion of Attorney General to Senator Frank W. Ballance, Jr. and Representative E. David Redwine, 2001 N.C. AG LEXIS 5 (3/28/2001).

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

CASE NOTES

III. Duty to Keep Streets, etc., Free from Obstructions.

III. DUTY TO KEEP STREETS, ETC., FREE FROM OBSTRUCTIONS.

Liability for Negligent Obstructions. — In a wrongful death action arising from a motorist being struck by a train at a railroad crossing in a city, the motorist's widow did not allege that obstructions which allegedly interfered with the motorist's view of the oncoming train were the result of the city's failure to maintain foliage on city property, so she did not show any breach of duty by the city. Wilkerson v. Norfolk S. Ry., — N.C. App. —, 566 S.E.2d 104, 2002 N.C. App. LEXIS 744 (2002).

§ 160A-298. Railroad crossings.

CASE NOTES

Authority Under This Section Does Not Constitute Duty. — In a wrongful death action arising from a motorist's death after being struck by a train at a railroad crossing in a city, the city's authority, under G.S. 160A-298(c), to require the installation of warning devices at the crossing did not create a duty on its part to have such devices installed. Wilkerson v. Norfolk S. Ry., — N.C. App. —, 566 S.E.2d 104, 2002 N.C. App. LEXIS 744 (2002).

§ 160A-300.1. Use of traffic control photographic systems.

Legal Periodicals. — For recent development, "Picture It: Red Light Cameras Abide by the Law of the Land," see 80 N.C.L. Rev. 1879 (2002).

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

Local Modification. — City of Albemarle: 2002-80, s. 1; city of Greenville: 1998-80; city of Lumberton: 1995, c. 53, ss. 1, 2; city of Winston-Salem: 2000-104, s. 2.

§ 160A-304. Regulation of taxis.

(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars ($15.00). The ordinances may also specify the types of taxicab services which are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Justice may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
(4) Violation of any federal or State law relating to prostitution;
(5) Noncitizenship in the United States;
(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least

quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchised operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the city council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise. (1943, c. 639, s. 1; 1945, c. 564, s. 2; 1971, c. 698, s. 1; 1981, c. 412, s. 4; c. 606, s. 5; c. 747, s. 66; 1987, c. 777, s. 7; 2002-147, s. 14.)

Editor's Note. — Session Laws 2002-147, s. 15, provides: "If the Private Security Officer Employment Standards Act of 2002 [S. 2238, 107th Cong. (2002)] is enacted by the United States Congress, the State of North Carolina declines to participate in the background check system authorized by that act as a result of the enactment of this act."

Effect of Amendments. — Session Laws 2002-147, s. 14, effective October 9, 2002, in subsection (a), added the last two sentences of the first paragraph, and inserted the second and third paragraphs.

Article 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

CASE NOTES

Cited in Bostic Packaging, Inc. v. City of Monroe, 149 N.C. App. 825, 562 S.E.2d 75, 2002 N.C. App. LEXIS 307 (2002), cert. denied, 355 N.C. 747, 565 S.E.2d 192 (2002).

§ 160A-312. Authority to operate public enterprises.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in City of New Bern v. Carteret-Craven Elec. Membership Corp., 356 N.C. 123, 567 S.E.2d 131, 2002 N.C. LEXIS 681 (2002).

§ 160A-326. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The City, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the City, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the City.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the City and all services performed by a railroad pursuant to a contract with the City in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right-of-way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail-related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the City or a railroad, or otherwise occupied by the City or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the City concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. — The City may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the City enters into any contract authorized by subsection (b) of this section, the contract shall require the City to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the City, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the City does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the City, the City shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the City, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and

death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) Applicability. — This section shall apply only to municipalities with a population of more than 500,000 persons, according to the latest decennial census, or to municipalities that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 3.)

Editor's Note. — Session Laws 2002-78, s. 5, made this section effective August 15, 2002.

Session Laws 2002-78, s. 4, contains a severability clause.

The definitions in subsection (a) were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

Part 2. Electric Service in Urban Areas.

§ 160A-331. (See editor's note) Definitions.

CASE NOTES

The definition of premises, etc. Where a customer constructed a new building on an adjacent lot, that was separately metered, and then demolished the old building, the new building was considered a new premises, and the customer was entitled to choose between secondary electric service providers under Electric Act, under the specific facts of the instant case. City of New Bern v. Carteret-Craven Elec. Membership Corp., 356 N.C. 123, 567 S.E.2d 131, 2002 N.C. LEXIS 681 (2002).

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

Local Modification. — (As to Article 19) Cabarrus and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; (As to this section) Davie: 1989 (Reg. Sess., 1990), c. 853; Durham: 1989 (Reg. Sess., 1990), c. 841, s. 3; Johnston: 1985: (Reg. Sess., 1986), c. 804; Mecklenburg: 1971, c. 860; 1991, (Reg. Sess., 1992), c. 884; (As to Article 19) Orange and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; Pamlico (except for town of Minnesott Beach): 1977, c. 478, s.3; 2001-134; Pitt: 2002-19, s. 1; (As to Article 19) Pitt: 2002-19, s. 1; (As to Article 19) Wake: 1998-192, s. 1, as amended by 2000-66, s. 1; city of Belmont: 1991, c. 596, s. 3; (As to Article 19) city of Charlotte: 1987, c. 123; 1991, c. 161; 2001-228; city of Mount Holly: 1991, c. 289, s. 3; (As to Article 19) city of Raleigh: 1998-192, s. 1, as amended by 2000-66, s. 1; city of Whiteville: 2000-78, s. 1; town of Aberdeen: 1985, c. 308; town of Apex: 1993, c. 312, ss. 1, 2; (As to Article 19) 1998-192, s. 1, as amended by 2000-66, s. 1; (As to Article 19) town of Bethel: 2002-19, s. 1; town of Carthage: 1999-239, s. 1; (As to Article 19) town of Cary: 1998-192, s. 1, as amended by 2000-66, s. 1; (As to Article 19) town of Cornelius: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Davidson: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Faison: 1993 (Reg. Sess., 1994), c. 769, s. 28.16; town of Farmville: 1999-43, s. 1; (As to Article 19) town of Garner: 1998-192, s. 1, as amended by 2000-66, s. 1; (As to Article 19) town of Grifton: 1993, c. 53, s. 1; town of Huntersville: 1983: (Reg. Sess., 1984), c. 966; 1995, c. 362, s. 3.1; 1997-106; town of Kings Mountain: 1999-259, s. 1;

town of Knightdale: 1985, c. 564; (As to Article 19) town of Matthews: 1991, c. 161; 1999-69, s. 1; (As to Article 19) town of Mint Hill: 1991, c. 161; 1993 (Reg. Sess., 1994), c. 590; s. 1; town of Mooresville: 1991, c. 289, s. 2; town of Nashville: 1985, c. 217; town of Navassa: 1987, c. 10; town of Pinebluff: 1999-35, ss. 1, 2; (As to Article 19) town of Pineville: 1991, c. 161; town of Pittsboro: 1987, c. 460, s. 30; town of River Bend: 1987, c. 26; 1997-363, s. 1; (As to Article 19) town of St. James, 1999-241, s. 1; town of St. Pauls: 1987, c. 200; town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 1; town of Southern Pines: 1985, c. 308; town of Stanley: 1991, c. 289, s. 3; town of Tabor City: 1997-281, s. 2; town of Taylortown: 1987, c. 601, s. 2; town of Unionville: 1999-90, s. 2; town of Wake Forest: 1985, c. 196; town of Warsaw: 1985, c. 5; town of Williamston: 1997-281, s. 1; village of Pinehurst: 1985, c. 379, s. 4; c. 308; 1991 (Reg. Sess., 1992), c. 808, s. 2; village of Sugar Mountain: 1985, c. 395; village of Woodlake: 1991 (Reg. Sess., 1992), c. 859, s. 1 (contingent on referendum).

§ 160A-364. Procedure for adopting or amending ordinances under Article.

CASE NOTES

Cited in Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, 2002 N.C. App. LEXIS 272 (2002).

§ 160A-364.1. Statute of limitations.

CASE NOTES

Cited in Hyatt v. Town of Lake Lure, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. Aug. 26, 2002).

Part 2. Subdivision Regulation.

§ 160A-371. Subdivision regulation.

CASE NOTES

Failure to Follow Quasi-Judicial Process. — Where ordinance adopted by city required the city to use a quasi-judicial process when reviewing an application to develop property, council's decision denying a developer's application to build affordable housing would be reversed, because the council did not use fair-trial standards in reaching its decision and did not state the facts upon which it based its decision with sufficient specificity that the appellate court could review the decision to determine if it was lawful. Guilford Fin. Servs., LLC v. City of Brevard, 150 N.C. App. 1, 563 S.E.2d 27, 2002 N.C. App. LEXIS 399 (2002).

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

CASE NOTES

Failure to Follow Quasi-Judicial Process. — Where ordinance adopted by city required the city to use a quasi-judicial process when reviewing an application to develop property, council's decision denying a developer's application to build affordable housing would be reversed, because the council did not use fair-trial standards in reaching its decision and did not state the facts upon which it based its decision with sufficient specificity that the

court could review the decision to determine if it was lawful. Guilford Fin. Servs., LLC v. City of Brevard, 150 N.C. App. 1, 563 S.E.2d 27, 2002 N.C. App. LEXIS 399 (2002).

Part 3. Zoning.

§ 160A-381. Grant of power.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Hyatt v. Town of Lake Lure, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. Aug. 26, 2002).

§ 160A-383. Purposes in view.

CASE NOTES

Rezoning Upheld. — City's decision to adopt ordinances rezoning two parcels of land was a single procedure, constituting legitimate conditional zoning, entirely consistent with act permitting city to engage in conditional zoning as a legislative act, where the zoning ordinances were adopted in accordance with a small area plan, with goals that included: creating a greater mixture of land uses; planning for future mass transit service; developing pedestrian improvements; and developing a public gathering space and a network of green spaces. Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, 2002 N.C. App. LEXIS 272 (2002).

§ 160A-385. Changes.

CASE NOTES

II. Protests.

II. PROTESTS.

Persons Entitled to Invoke Protest Provisions. —

Where city proposed to amend zoning ordinance to eliminate nonconforming outdoor signs, the group of lot owners included in the proposed change was limited to those owners who had existing, nonconforming signs at the time the ordinance was announced; because city failed to meet its duty under Unruh v. City of Ashville, 97 N.C. App. 287, 388 S.E.2d 235 (1990), to determine whether at least 20 percent of this group timely filed protest petitions, the amendment, enacted by a simple majority, was invalid. Morris Communs. Corp. v. City of Asheville, 356 N.C. 103, 565 S.E.2d 70, 2002 N.C. LEXIS 546 (2002).

§ 160A-385.1. Changes.

CASE NOTES

Illustrative Cases. — Developer acquired a statutory vested right in a governmentally-approved land use plan because the public hearing notice on the adoption of that plan identified the classification of the developer's property and indicated the designation applied to it was used with a general zoning district to modify development conditions according to an approved conditional site plan. Michael Weinman Assocs. v. Town of Huntersville, 147

N.C. App. 231, 555 S.E.2d 342, 2001 N.C. App. LEXIS 1133 (2001).

§ 160A-386. Protest petition; form; requirements; time for filing.

CASE NOTES

Cited in Morris Communs. Corp. v. City of Asheville, 356 N.C. 103, 565 S.E.2d 70, 2002 N.C. LEXIS 546 (2002).

§ 160A-388. Board of adjustment.

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Appellate Jurisdiction of Board. — In reviewing the determination of an administrative enforcement officer that a sawmill on residential property violated a city ordinance, city's board of adjustment only had the authority to reverse, affirm, or modify the officer's determination that the owner's use of the sawmill violated the zoning ordinance, and the board did not have the authority to rule on the owner's constitutional challenges to the validity of the zoning ordinance itself. Dobo v. Zoning Bd. of Adjustment, 149 N.C. App. 338, 561 S.E.2d 298, 2002 N.C. App. LEXIS 311 (2002).

Cited in Tucker v. Mecklenburg County Zoning Bd. of Adjustment, 148 N.C. App. 52, 557 S.E.2d 631, 2001 N.C. App. LEXIS 1273 (2001); Hemphill-Nolan v. Town of Weddington, — N.C. App. —, 568 S.E.2d 887, 2002 N.C. App. LEXIS 1075 (2002).

II. JUDICIAL REVIEW.

Scope of Judicial Review. — In reviewing the city board of adjustment's affirmance of an administrative enforcement officer decision that a sawmill on residential property violated a city ordinance, the superior court had the statutory power to review only the issue of whether the officer's determination was properly affirmed, and did not have the statutory authority to address the owner's constitutional challenges to the validity of the zoning ordinance. Dobo v. Zoning Bd. of Adjustment, 149 N.C. App. 338, 561 S.E.2d 298, 2002 N.C. App. LEXIS 311 (2002).

Part 3C. Historic Districts and Landmarks.

§ 160A-400.6. Required landmark designation procedures.

As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Office of Archives and History. No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a preservation commission or the governing board of a municipality, until all of the following procedural steps have been taken:

(1) The preservation commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.

(2) The preservation commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Office of Archives and History, North Carolina Department of Cultural Resources.

(3) The Department of Cultural Resources, acting through the State Historic Preservation Officer shall either upon request of the department or at the initiative of the preservation commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the commission, the commission and any city or county governing board shall be relieved of any responsibility to consider such comments.

(4) The preservation commission and the governing board shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(5) Following the joint public hearing or separate public hearings, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark or landmarks are located. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the preservation commission shall pay a reasonable fee for filing and indexing. In the case of any landmark property lying within the zoning jurisdiction of a city, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city or county building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(7) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the preservation commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (1989, c. 706, s. 2; 2002-159, s. 35(m).)

Effect of Amendments. — Session Laws 2002-159, s. 35(m), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History" in the introductory paragraph and in subdivision (2).

Part 4. Acquisition of Open Space.

§ 160A-401. Legislative intent.

CASE NOTES

Cited in Hyatt v. Town of Lake Lure, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. Aug. 26, 2002).

Part 5. Building Inspection.

§ 160A-411. Inspection department.

CASE NOTES

Cited in Hyatt v. Town of Lake Lure, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. Aug. 26, 2002).

§ 160A-412. Duties and responsibilities.

CASE NOTES

Cited in Hyatt v. Town of Lake Lure, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. Aug. 26, 2002).

§ 160A-417. Permits.

(a) No person shall commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system,

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a

registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required 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. Violation of this section shall constitute a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C.S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 65; 1981, c. 677, s. 1; 1983, c. 377, s. 3; c. 614, s. 1; 1987 (Reg. Sess., 1988), c. 1000, s. 2; 1993, c. 539, s. 1090; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 2; 2002-165, s. 2.20.)

Effect of Amendments. — Session Laws 2002-165, s. 2.20, effective October 23, 2002, "erosion and sedimentation control" for "erosion control" in subsection (b).

§ 160A-426. Unsafe buildings condemned.

Local Modification. — City of Durham: 2002-118, s. 1; city of Fayetteville: 2002-118, s. 1; town of Hope Mills: 2002-118, s. 1; town of Spring Lake: 2002-118, s. 1.

§ 160A-432. Enforcement.

Local Modification. — City of Durham: 2002-118, s. 2; city of Fayetteville: 2002-118, s. 2; town of Hope Mills: 2002-118, s. 2; town of Spring Lake: 2002-118, s. 2.

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 (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), 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 (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).

[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]

(5b) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality 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 applies to the Cities of Eden, Greenville, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. —

a. 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.

b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

c. 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; c. 733, ss. 1, 2; 1997-101, ss. 1, 2; 1997-414, s. 1; 1997-449, s. 1; 1998-26, s. 1; 1998-87, s. 1; 2000-186, s. 1; 2001-283, s. 1; 2001-448, s. 3; 2002-118, s. 3.)

Editor's Note. — Session Laws 2002-118, s. 3, added the city of Whiteville to the jurisdictions to which the amendment made by Session Laws 1995, c. 733, s. 1, applies. Session Laws 1995, c. 733, s. 2, provided the amendment only applied to the city of Lumberton.

Session Laws 1997-101, s. 1, added the city of Roanoke Rapids, and s. 2, amended Session Laws 1995, c. 733, s. 1.

Session Laws 1997-414, s. 1, added the City of Greenville, and the towns of Bethel, Farmville and Newport.

Session Laws 1997-449, s. 1, added the municipalities in Lee county.

Session Laws 1998-26, s. 1, added the town of Waynesville.

Session Laws 1998-87, s. 1, added the city of Eden.

Since Session Laws 1995-733, s. 1, now applies to 10 jurisdictions, it has been codified as subdivision (5b) at the direction of the Revisor of Statutes. The bracketed sentence at the end of subdivision (5a) has also been added at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2002-118, s. 3, added subdivision (5b).

CASE NOTES

Cited in Carolina Holdings, Inc. v. Hous. Appeals Bd., 149 N.C. App. 579, 561 S.E.2d 541, 2002 N.C. App. LEXIS 281 (2002).

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-464. Provisions of the agreement.

OPINIONS OF ATTORNEY GENERAL

Local boards of education may enter into interlocal agreements to form the North Carolina School Boards Trust. See opinion of Attorney General to Edwin Dunlap, Jr., Executive Director, North Carolina School Boards Association, 2002 N.C. AG LEXIS 12 (2/20/02).

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

Local Modification. — City of Charlotte: 1998-200, s. 2; 2002-79, s. 1; city of Raleigh: 1998-200, s. 2.

CASE NOTES

And Its Government Immunity Was Not Waived. —

Summary judgment evidence showed a city did not waive its sovereign immunity, under G.S. 160A-485(a), by purchasing liability insurance or by participating in a local government risk pool, because the city's affidavit stated it had no liability insurance policy in effect at the relevant time, and it was not alleged the city participated in a local government risk pool. Wilkerson v. Norfolk S. Ry., — N.C. App. —, 566 S.E.2d 104, 2002 N.C. App. LEXIS 744 (2002).

Cited in Hyatt v. Town of Lake Lure, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. Aug. 26, 2002).

§ 160A-489. Auditoriums, coliseums, and convention centers.

Local Modification. — New Hanover and the municipalities in New Hanover: 2002-138, s. 6; City of Wilmington: 1981, c. 595.

Article 22.

Urban Redevelopment Law.

§ 160A-500. Short title.

Local Modification. — (As to Article 22) Town of Carrboro: 1987, c. 476, s. 1; (As to Article 22) Troy Redevelopment Commission: 2002-83, s. 1.

Article 26.

Regional Public Transportation Authority.

§ 160A-626. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The Authority, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the Authority, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights

by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the Authority.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the Authority and all services performed by a railroad pursuant to a contract with the Authority in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right of way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the Authority or a railroad, or otherwise occupied by the Authority or a railroad, pursuant to charter grant, fee simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the Authority concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. — The Authority may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the Authority enters into any contract authorized by subsection (b) of this section, the contract shall require the Authority to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the Authority, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the Authority does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the Authority, the Authority shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the Authority, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single

accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes. (2002-78, s. 1.)

Editor's Note. — Session Laws 2002-78, s. 5, made this section effective August 15, 2002.

Session Laws 2002-78, s. 4, contains a severability clause.

The definitions in subsection (a) were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

Chapter 161.

Register of Deeds.

Article 2.

The Duties.

Article 2.

The Duties.

§ 161-14. Registration of instruments.

(a) After the register of deeds has determined that all statutory and locally adopted prerequisites for recording have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. The register of deeds shall then proceed to register it on the day that it is presented unless a temporary index has been established.

The register of deeds may establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

(b) All instruments, except instruments conforming to the provisions of G.S. 25-9-521, presented for registration on paper shall meet all of the following requirements:

(1) Be eight and one-half inches by eleven inches or eight and one-half inches by fourteen inches.
(2) Have a blank margin of three inches at the top of the first page and blank margins of one-half inches on the remaining sides of the first page and on all sides of subsequent pages.
(3) Be typed or printed in black on white paper in a legible font. A font size no smaller than 10 points shall be considered legible. Blanks in an instrument may be completed in pen and corrections to an instrument may be made in pen.
(4) Have text typed or printed on one side of a page only.
(5) State the type of instrument at the top of the first page.

If an instrument does not meet these requirements, the register of deeds shall register the instrument after collecting the fee for nonstandard documents as required by G.S. 161-10(a)(19) in addition to all other applicable recording fees. However, if an instrument fails to meet the requirements because it contains print in a font size smaller than 10 points, the register of

deeds may register the instrument without collecting the fee for nonstandard documents if, in the discretion of the register of deeds, the instrument is legible.

(c) Transportation corridor official maps authorized under Article 2E of Chapter 136 shall be registered and indexed by the end of the third business day after the business day the map is presented to the register of deeds.

(d) For the purposes of this section, the term "instrument" means all of the following for which a fee is collected under G.S. 161-10(a):

(1) Instruments in General.
(2) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages.
(3) Uniform Commercial Code filings.
(4) Torrens Registrations.
(5) Master Forms. (R.C., c. 37, s. 23; 1868, c. 35, s. 9; Code, s. 3654; Rev., s. 2658; C.S., s. 3553; 1921, c. 114; 1971, c. 657; 1998-184, s. 5; 2001-390, s. 5; 2001-464, ss. 2, 3; 2002-159, s. 53.)

Local Modification. — Cabarrus: 2002-115, s. 3; (applicable to documents filed with register of deeds only). Mecklenburg: 2002-115, s. 3 (applicable to documents filed with register of deeds only).

Effect of Amendments. —
Session Laws 2002-159, s. 53, effective July 1, 2002, inserted "except instruments conforming to the provisions of G.S. 25-9-521" in the introductory language of subsection (b).

§ 161-22. Index of registered instruments.

Cross References. — As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

§ 161-31. Tax certification.

(a) Tax Certification. — The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(b) Applicability. — This section applies only to Alleghany, Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Durham, Forsyth, Gaston, Graham, Granville, Harnett, Haywood, Henderson, Hertford, Iredell, Jackson, Lee, Macon, Madison, Martin, Montgomery, Northampton, Pasquotank, Perquimans, Person, Pitt, Polk, Rockingham, Rowan, Rutherford, Stanly, Swain, Transylvania, Vance, Warren, Washington, and Yadkin Counties. (2001-464, s. 1; 2001-513, s. 14; 2002-51, s. 1.)

Effect of Amendments. —
Session Laws 2002-51, s. 1, effective July 30, 2002, added Bertie, Clay, Durham, Henderson, Hertford, Macon, Northampton, Polk, Rutherford, and Transylvania to the list of counties to which this section applies.

Chapter 162.

Sheriff.

Article 4.

County Prisoners.

§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.

(a) Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a fit and secure jail in some other county where the prisoner shall be held for such length of time as the judge may direct.

(b) Whenever necessary to avoid a security risk in any county jail, or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of Correction or his authorized representative. For purposes of this subsection, a prisoner poses a security risk if the prisoner:

(1) Poses a serious escape risk;
(2) Exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision;
(3) Needs to be protected from other inmates, and the county jail facility cannot provide such protection;
(4) Is a female or a person 18 years of age or younger, and the county jail facility does not have adequate housing for such prisoners;
(5) Is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; or
(6) Otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility.

(c) The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Secretary of Correction, shall receive and release custody of

the prisoner in accordance with the terms of the court order. If a prisoner is transferred to a unit of the State prison system, the county from which the prisoner is transferred shall pay the Department of Correction for maintaining the prisoner for the time designated by the court at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner. The county shall also pay the Department of Correction for the costs of extraordinary medical care incurred while the prisoner was in the custody of the Department of Correction, defined as follows:

(1) Medical expenses incurred as a result of providing health care to a prisoner as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to a prisoner as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the prisoner is incarcerated, provided the prisoner was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the county is obtained by the Department.

If the prisoner is transferred to a jail in some other county, the county from which the prisoner is transferred shall pay to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner for the time designated by the court. Counties are hereby authorized to enter into contractual agreements with other counties to provide jail facilities to which prisoners may be transferred as deemed necessary under this section.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any superior or district court judge holding court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Secretary of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of crimes, except when admission to an inpatient prison medical or mental health unit is required to provide services deemed necessary by a prison health care clinician. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Secretary of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the Department of Correction the actual cost of transporting the prisoners and the cost of maintaining the prisoners at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, provided, however, that a county is not required to reimburse the State for transporting or maintaining a prisoner who was a resident of another state or county at the time he was arrested. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the

State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of the superior or district court a prior order of transfer, the sheriff of the county and the Department of Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this subsection shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the municipality shall be liable for the cost of transporting and maintaining the prisoners to the same extent as a county would be unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs.

(d) Whenever a prisoner held in a county jail requires medical or mental health treatment that the county decides can best be provided by the Department of Correction, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of Correction or his authorized representative. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the prison unit where he is to be held, and for returning him to the jail of the county from which he was transferred. The prisoner shall be returned when the attending medical or mental health professional determines that the prisoner may be returned safely. The officer in charge of the prison unit designated by the Secretary of Correction shall receive custody of the prisoner in accordance with the terms of the order and shall release custody of the prisoner in accordance with the instructions of the attending medical or mental health professional. The county from which the prisoner is transferred shall pay the Department of Correction for maintaining the prisoner for the period of treatment at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, and for extraordinary medical expenses as set forth in subsection (c) of this section.

(e) The number of county prisoners incarcerated in the State prison system pursuant to safekeeping orders from the various counties pursuant to subsection (b) of this section or for medical or mental health treatment pursuant to subsection (d) of this section may not exceed 200 at any given time unless authorized by the Secretary of Correction. The Secretary may refuse to accept any safekeeper and may return any safekeeper transferred under a safekeeping order when this capacity limit is reached. (1957, c. 1265; 1967, c. 996, ss. 13, 15; 1969, cc. 462, 1130; 1973, c. 822, s. 3; c. 1262, s. 10; 1983, c. 165, ss. 1-4; 1985 (Reg. Sess., 1986), c. 1014, s. 198(a)-(c); 1989, c. 1, s. 7; 1991, c. 535, s. 1; 1991 (Reg. Sess., 1992), c. 983, s. 1; 2002-126, s. 17.1.)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 17.1, effective July 1, 2002, deleted the first sentence following subdivision (c)(3), which read: "However, a county is not required to reimburse the State for maintaining a prisoner who was a resident of another state or county at the time he committed the crime for which he is imprisoned."

§ 162-58. Counties may work prisoners.

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of misdemeanors or felonies and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county employees or by the sheriff. The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit. (1991 (Reg. Sess., 1992), c. 841, s. 1; 2002-159, s. 54.)

Effect of Amendments. — Session Laws 2002-159, s. 54, effective October 11, 2002, substituted "convicted of misdemeanors or felonies" for "convicted of crimes" in the first sentence.

CASE NOTES

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 162-61. Liability of county.

CASE NOTES

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

Chapter 162A.

Water and Sewer Systems.

Article 1.

Water and Sewer Authorities.

§ 162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.

(a) The governing body of a single county or the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held thereof. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(a1) If an authority is organized by three or more political subdivisions, it may include in its organization nonprofit water corporations. The board of directors of a nonprofit water corporation must signify the corporation's determination to participate in the organization of the authority by adopting a resolution that meets the requirements of subsection (b) of this section. The nonprofit water corporation is not subject to the notice and public hearing requirements of subsection (a) of this section. For all other purposes of this Article, the nonprofit water corporation shall be considered to be a political subdivision.

(a2) If an authority is organized by three or more political subdivisions, it may include in its organization the State of North Carolina. The State of North Carolina is not subject to the notice and public hearing requirements of subsection (a) of this section. For purposes of this Article, the State of North Carolina shall be a political subdivision and its governing body shall be the Council of State.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;
(2) A statement that such authority is organized under this Article;
(3) The names of the organizing political subdivisions; and
(4) The names and addresses of the first members of the authority appointed by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with

the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1955, c. 1195, s. 3; 1971, c. 892, s. 1; 1991, c. 516, s. 1; 2001-224, s. 1; 2002-76, s. 1.)

Effect of Amendments. — Session Laws 2002-76, s. 1, effective August 15, 2002, deleted "up to two" preceding "non-profit water corporations" in the first sentence of subsection (a1).

§ 162A-3.1. Alternative procedure for creation.

(a) As an alternative to the procedure set forth in G.S. 162A-3, the governing body of a single county or the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this section of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(a1) If an authority is organized by three or more political subdivisions, it may include in its organization nonprofit water corporations. The board of directors of a nonprofit water corporation must signify the corporation's determination to participate in the organization of the authority by adopting a resolution that meets the requirements of subsection (b) of this section. The nonprofit water corporation is not subject to the notice and public hearing requirements of subsection (a) of this section. For all other purposes of this Article, the nonprofit water corporation shall be considered to be a political subdivision.

(a2) If an authority is organized by three or more political subdivisions, it may include in its organization the State of North Carolina. The State of North Carolina is not subject to the notice and public hearing requirements of subsection (a) of this section. For purposes of this Article, the State of North Carolina shall be a political subdivision and its governing body shall be the Council of State.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this section of this Article;

(3) The names of the organizing political subdivisions;
(4) The names and addresses of the members of the authority appointed by the organizing political subdivisions; and
(5) A statement that members of the authority will be limited to such members as may be appointed from time to time by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this section of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this section of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this section of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1975, c. 224, s. 1; 1991, c. 516, s. 2; 2001-224, s. 2; 2002-76, s. 2.)

Effect of Amendments. —

Session Laws 2002-76, s. 2, effective August 15, 2002, deleted "up to two" preceding "non-profit water corporations" in the first sentence of subsection (a1).

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

Editor's Note. —

Session Laws 2002-21 (Extra Session), ss. 1.(a)-(h), (k), and (*l*), provide: "(a) Notwithstanding G.S. 163-1(b), the date of the primary election in 2002 shall be September 10, 2002.

"(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

"(c) Notwithstanding G.S. 163-111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163-111(f) under the same rule as if there had been a tie in a second primary.

"(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A-23.1(d)(2) to be on

the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

"(e) "The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

"(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163-122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163-122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

"(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

"(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

"(k) As used in this section, 'order' also includes guidelines and directives.

"(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002. This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002."

Session Laws 2002-21 (Extra Session), s. 1, became effective July 16, 2002. Session Laws 2002-21, s. 1(*l*), expires 10 days after the certification of all elections originally scheduled to be held in 2002.

Article 2.

Time of Elections to Fill Vacancies.

§ 163-9. Filling vacancies in State and district judicial offices.

OPINIONS OF ATTORNEY GENERAL

The term to which the Honorable W. Robert Bell was elected in 1998 was eight years. See opinion of Attorney General to The Honorable Forest A. Ferrell, Sigmon, Clark, Mackie, Hutton, Hanvey & Ferrell, P.A., 2001 N.C. AG LEXIS 13 (3/28/2001).

SUBCHAPTER III. QUALIFYING TO VOTE.

Article 6.

Qualifications of Voters.

§ 163-59. Right to participate or vote in party primary.

CASE NOTES

Nonmembers. — G.S. 163-59, which applied to the primary elections of district court judges, was not unconstitutional as plaintiff's rights were not violated by plaintiff's exclusion from the particular party primary; the State could legitimately allow political parties to close their primaries to nonmembers. Neier v. State, — N.C. App. —, 565 S.E.2d 229, 2002 N.C. App. LEXIS 716 (2002).

ARTICLE 7A.

Registration of Voters.

§ 163-82.10. Official record of voter registration.

(a) Application Form Becomes Official Record. — A completed and signed registration application form described in G.S. 163-82.3, once approved by the county board of elections, becomes the official registration record of the voter. The county board of elections shall maintain custody of the official registration records of all voters in the county and shall keep them in a place where they are secure.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

(2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age or date of birth or both, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — Free lists of all registered voters in the county shall be provided in the following cases:

(1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:

a. The State chair of each political party; and

b. The county chair of each political party

once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, "political party" means a political party as defined in G.S. 163-96.

(d) Exception for Address of Certain Registered Voters. — Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 31/2; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12; c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995 (Reg. Sess., 1996), c. 688, s. 2; 2001-396, s. 1; 2002-171, s. 8.)

Cross References. — As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

Effect of Amendments. — Session Laws 2002-171, s. 8, effective January 1, 2003, rewrote subsection (d), adding provisions pertaining to the Address Confidentiality Program.

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ 163-98. General election participation by new political party.

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for State, congressional, and national offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 1979, c. 411, s. 4; 2002-159, s. 55(b).)

Effect of Amendments. — Session Laws 2002-159, s. 55(b), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, substituted "candidates for national, State, congressional, and local offices printed on the official ballots" for "candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election" in the first paragraph; and added the last sentence in the second paragraph.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

(a) Notice and Pledge. — No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and

place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date _____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on _____, _____ I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed _____

(Name of Candidate)

Witness:

_____

_____

(Title of witness)"

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. — No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) **(Effective with respect to primaries and elections held before January 1, 2004)** Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of

G.S. 163-106(c) is set out twice. See notes.

candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(c) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) **(Effective with respect to primaries and elections held before January 1, 2004)** Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

(d) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

(e) Withdrawal of Notice of Candidacy. — Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

(i) Repealed by Session Laws 2001-403, s. 3, effective January 1, 2002. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg.

Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a).)

Subsections (c) and (d) Set Out Twice. — The first versions of subsections (c) and (d) as set out above are effective with respect to primaries and elections held before January 1, 2004. The second versions of subsections (c) and (d) set out above are effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1.1, provides: "Notwithstanding G.S. 163-106(h), any person who filed a notice of candidacy under G.S. 163-106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

"(1) If that person was declared the nominee of the party under G.S. 163-110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163-114).

"(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163-106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163-112 notwithstanding the time of and reason for the withdrawal."

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. —

Session Laws 2002-158, ss. 8, 9, effective with respect to primaries and elections held on or after January 1, 2004, in subsection (c), deleted "Justices of the Supreme Court, Judges of the Court of Appeals" from the list of offices to which the subsection applies; and in subsection (d), deleted "two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or" following "In any primary in which there are."

Session Laws 2002-159, s. 55(a), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, in subsection (a), substituted "without having filed" for "unless he shall have filed" in the introductory paragraph; inserted "or deliver by commercial carrier service" in the paragraph following the pledge; and made gender neutralization changes throughout.

§ 163-107. Filing fees required of candidates in primary; refunds.

(a) **(Effective with respect to primaries and elections held before January 1, 2004)** Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior and district court judge	One percent (1%) of the annual salary of the office sought

G.S. 163-107(a) is set out twice. See notes.

Office Sought	Amount of Filing Fee
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

(a) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought

G.S. 163-107(a) is set out twice. See notes.

Office Sought	Amount of Filing Fee
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in G.S. 163-106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that board shall cause a warrant to be drawn on the Treasurer of the State for the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county finance officer that the refund should be made, and the county finance officer shall make the refund in accordance with the provisions of the Local Government Budget and Fiscal Control Act. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the primary election provided by G.S. 163-1, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163-106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163-106(e). (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C.S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84; 1973, c. 47, s. 2; c. 793, s. 37; 1977, c. 265, s. 6; 1983, c. 913, s. 56; 1995, c. 464, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 9; 2001-403, s. 4; 2002-158, s. 10.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subsection (a) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. —

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. —

Session Laws 2002-158, s. 10, effective with respect to primaries and elections held on or after January 1, 2004, substituted "All District Attorneys of the General Court of Justice" for "All Justices, Judges, and District Attorneys of the General Court of Justice other than superior and district court judge" in subsection (a).

§ 163-107.1. Petition in lieu of payment of filing fee.

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) **(Effective with respect to primaries and elections held before January 1, 2004)** If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, any State executive officer, Justice of the Supreme Court or Judge of the Court of Appeals, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(b) **(Effective with respect to primaries and elections held on or after January 1, 2004)** If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the

G.S. 163-107.1(b) is set out twice. See notes.

same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections. — Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ten percent (10%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot. (1975, c. 853; 1977, c. 386; 1985, c. 563, s. 13; 1996, 2nd Ex. Sess., c. 9, s. 12; 2001-403, s. 7; 2002-158, s. 11.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subsection (b) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. —

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. —

Session Laws 2002-158, s. 11, effective with respect to primaries and elections held on or after January 1, 2004, in the first sentence of subsection (b), deleted "Justice of the Supreme Court or Judge of the Court of Appeals" follow-

ing "any State executive officer" and made a minor stylistic change.

§ 163-109: Repealed by Session Laws 2002-159, s. 55.(j), effective January 1, 2003, and applicable to all primaries and elections held on or after that date.

§ 163-110. Candidates declared nominees without primary.

Editor's Note. — Session Laws 2002-21 (Extra Session), s. 1.1, provides: "Notwithstanding G.S. 163-106(h), any person who filed a notice of candidacy under G.S. 163-106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

"(1) If that person was declared the nominee of the party under G.S. 163-110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163-114).

"(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163-106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163-112 notwithstanding the time of and reason for the withdrawal."

§ 163-111. Determination of primary results; second primaries.

(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. — Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary. — If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the

highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary. —

(1) **(Effective with respect to primaries and elections held before January 1, 2004)** A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court judges,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(1) **(Effective with respect to primaries and elections held on or after January 1, 2004)** A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be

G.S. 163-111(c)(1) is set out twice. See notes.

eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or director of the county board of elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.

(d) Tie Votes; How Determined. —

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote

shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted. — In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C.S., s. 6045; 1927, c. 260, s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85; 1973, c. 47, s. 2; c. 793, ss. 43, 44; 1975, c. 844, s. 3; 1977, c. 265, s. 9; 1981, c. 645, ss. 1, 2; 1989, c. 549; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 10; 1999-424, s. 7(e); 2001-319, s. 11; 2001-403, s. 5; 2002-158, s. 12.)

Subdivision (c)(1) Set Out Twice. — The first version of subdivision (c)(1) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subdivision (c)(1) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. —

Session Laws, 2002-21 (Extra Session), s. 1.(c), provides: "Notwithstanding G.S. 163-111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act

have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163-111(f) under the same rule as if there had been a tie in a second primary."

Session Laws 2002-21 (Extra Session), s. 1.(*l*), provides: "Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002. This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002."

Session Laws 2002-21 (Extra Session), s. 1, became effective July 16, 2002. Session Laws 2002-21, s. 1(*l*), expires 10 days after the certification of all elections originally scheduled to be held in 2002.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. —

Session Laws 2002-158, s. 12, effective with respect to primaries and elections held on or after January 1, 2004, substituted "District Attorneys of the General Court of Justice" for "Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court judges" in subdivision (c)(1).

§ 163-112. Death of candidate before primary; vacancy in single office.

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1.1, provides:

"Notwithstanding G.S. 163-106(h), any person who filed a notice of candidacy under G.S. 163-106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

"(1) If that person was declared the nominee of the party under G.S. 163-110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163-114).

"(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163-106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163-112 notwithstanding the time of and reason for the withdrawal."

§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1.1, provides:

"Notwithstanding G.S. 163-106(h), any person who filed a notice of candidacy under G.S. 163-106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

"(1) If that person was declared the nominee of the party under G.S. 163-110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163-114).

"(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163-106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163-112 notwithstanding the time of and reason for the withdrawal."

§ 163-119. Voting by unaffiliated voter in party primary.

If a political party has, by action of its State Executive Committee reported

to the State Board of Elections by resolution delivered no later than the first day of December preceding a primary, provided that unaffiliated voters may vote in the primary of that party, an unaffiliated voter may vote in the primary of that party by announcing that intention under G.S. 163-166.7(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective. (1993 (Reg. Sess., 1994), c. 762, s. 7; 2002-159, s. 21(a).)

Effect of Amendments. — Session Laws 2002-159, s. 21(a), effective October 11, 2002, substituted "G.S. 163-166.7(a)" for "G.S. 163-150(a)" at the end of the first sentence.

Article 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification

and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF _____ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) This section does not apply to elections under Article 25 of this Chapter. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14; 1999-424, s. 5(b); 2002-159, s. 21(b).)

Editor's Note. —

Session Laws 2002-21 (Extra Session), s. 1.(f), provides: "The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163-122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used

under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163-122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district." For additional provisions pertaining to the 2002 primary elections, see G.S. 163-1.

Effect of Amendments. — Session Laws 2002-159, s. 21(b), effective October 11, 2002, inserted "FOR THE OFFICE OF _____" in subsection (b).

§ 163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

(a) Procedure for Qualifying as a Write-In Candidate. — Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent. — The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

(1) Applicant's name,
(2) Applicant's residential address,
(3) Declaration of applicant's intent to be a write-in candidate,
(4) Title of the office sought,
(5) Date of the election,
(6) Date of the declaration,
(7) Applicant's signature.

(c) Petitions for Write-in Candidacy. — An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.

(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each

petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition. — Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123."

(e) Defeated Primary Candidate. — No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. — If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-182.1, and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(g) **(Effective with respect to primaries and elections held before January 1, 2004)** Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for superior court judge and district court judge elections under Article 25 of this Chapter.

(g) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for and district court judge elections under Article 25 of this

G.S. 163-123(g) is set out twice. See notes.

Chapter. (1987, c. 393, ss. 1; 2; 1989, c. 92, s. 1; 1999-424, s. 5(c); 2001-319, s. 9(a); 2001-398, s. 7; 2001-403, s. 12; 2002-158, s. 13.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subsection (g) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

This section was amended by Session Laws 2002-158, s. 13 in the coded bill drafting format provided by G.S. 120-20.1. The words "and district court judge" were part of subsection (g) as it existed prior to the 2002 amendment and were not addressed by Session Laws 2002-158. Subdivision (g) has been set out above at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2002-158, s. 13, effective with respect to primaries and elections held on or after January 1, 2004, deleted "superior court judge" following "nonpartisan elections except for" in subsection (g).

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered.

Editor's Note. —

Session Laws 2002-180, ss. 4.1-4.8, creates the On-Line Voting Commission to be composed of 19 members as designated in the Act. The purpose of the Commission is to study the feasibility of establishing a system of voting on the Internet in North Carolina elections including such aspects of the issue as the following: (1) the state of technology with regard to on-line voting; (2) the experience of other states and other jurisdictions in use of on-line voting; (3) comprehensibility of the process to the average voter; (4) any unevenness in accessibility to or comfort level with on-line voting among different types of voters, and strategies for overcoming any such "digital divide"; (5) concerns of privacy and security; and (6) cost. The Legislative Services Office is to assign professional staff to assist the Commission. The Legislative Services Commission is to allocate funds for the expenses of the On-Line Voting Commission. The Commission is to submit a final written report of its findings and recommendations on or before the convening of the 2003 General Assembly. Upon filing its final report, the Commission shall terminate.

§ 163-129. Structure at voting place; marking off limits of voting place.

OPINIONS OF ATTORNEY GENERAL

Use of Public Facility for Voting. — A county board of elections has the authority to demand and use a part of a public facility or a facility supported in part through tax revenues for voting on primary or election days, even over the objection of those otherwise in control of the public facility; however, in exercising this authority, it is incumbent on the board of elections to act for the benefit of the public. See opinion of Attorney General to Angie Crews, Director of Elections, Surry County Board of Elections, 2000 N.C. AG LEXIS 29 (4/14/2000).

Article 12A.

Precinct Boundaries.

§ 163-132.3. Alterations to approved precinct boundaries.

(a) No county board of elections may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of census blocks established under the latest U.S. Census.

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Director the new boundaries of these precincts. The Executive Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this subsection. No precinct may be changed under this section between the date its boundaries become effective under G.S. 163-132.1(c) and January 2, 2002. Any changes to precincts during that period shall be made as provided in G.S. 163-132.1(d).

(b) The Executive Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

(d) Upon a determination that restricting the county board to using Census block boundaries would force the county board to draw a precinct without an adequate voting place or otherwise to draw a precinct in such a way that the administration of elections would be seriously hindered, the Executive Director may permit a county board of elections to designate a precinct boundary on a line that is not a Census block boundary of the most recent federal decennial Census if both the following conditions exist:

(1) The feature desired by the county board to be the precinct boundary meets at least one of the following:

a. Is likely to be designated by the Census Bureau as a block boundary in the next federal decennial Census.

b. Is a visible physical feature, readily distinguishable upon the ground, as certified by the North Carolina Department of Trans-

portation on its highway maps or by the county manager of the relevant county or if there is no county manager the chair of the county board of commissioners on official county maps, of the following nature:

1. Roads or streets.
2. Water features or drainage features.
3. Ridgelines.
4. Rail features.
5. Major aboveground power lines.
6. Major footpaths.

c. Is a municipalities boundary, as certified by the city clerk on the official map of the city.

d. Is a township boundary, as certified by the county manager, or the chair of the county board of commissioners if there is no county manager, on the official map of the county.

(2) All the following are true:

a. The precincts of which the line is a boundary which could be combined into a unit whose outer boundaries would be Census blocks, similar to the Combined Reporting Unit permitted by G.S. 163-132.1(c)(6).

b. That combined unit would be reasonable in size.

c. That combined unit, together with all other such combined units, would not undermine the coverage of the State's precincts in the next Census.

(e) During the period beginning October 1, 2002, and ending December 31, 2003, no county board of elections may change any precinct boundary. However, a county that has a precinct line that does not follow a 2000 Census Block Boundary may change that precinct line to conform to the way that precinct is shown on the General Assembly's redistricting database, provided the total population of the area moved from one precinct to another is not greater than ten percent (10%) of the total population of either precinct. A county board of elections proposing a change to a precinct during this period shall submit that change to the Legislative Services Office, which shall examine the proposed change and give its opinion of its compliance with this subsection to the Executive Director of the State Board of Elections. If the proposed change is in compliance with this subsection, the Executive Director shall approve it. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1993, c. 352, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 71; 1995, c. 423, ss. 2, 3; 1999-227, ss. 1, 2; 2001-319, ss. 10.1, 11; 2001-487, s. 96; 2002-159, s. 56.)

Effect of Amendments. —
Session Laws 2002-159, s. 56, effective October 11, 2002, added subsection (e).

Article 14A.

Voting.

Editor's Note. — Session Laws 2002-159, s. 21(h), provides: "Article 13A of Chapter 163 of the General Statutes is recodified as Article 14A of Chapter 163 of the General Statutes."

Part 1. Definitions.

§ 163-165. Definitions.

Editor's Note. —
Session Laws 2001-460, s. 3 enacted this Article as Article 13A. At the direction of the Revisor of Statutes, Article 13A followed repealed Article 14 in order to maintain numerical order in the section numbers. Subsequently, Session Laws 2002-159, s. 21(h), effective October 11, 2002, recodified Article 13A as Article 14A.

Part 2. Ballots and voting systems.

§ 163-165.1. Scope and general rules.

(a) Scope. — This Article shall apply to all elections in this State.

(b) Requirements of Official Ballots in Voting. — In any election conducted under this Article:

(1) All voting shall be by official ballot.

(2) Only votes cast on an official ballot shall be counted.

(c) Compliance With This Article. — All ballots shall comply with the provisions of this Article.

(d) Other Uses Prohibited. — An official ballot shall not be used for any purpose not authorized by this Article.

(e) Voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. (2001-460, s. 3; 2002-159, s. 55(o).)

Effect of Amendments. — Session Laws 2002-159, s. 55(o), effective October 11, 2002, added subsection (e).

§ 163-165.6. Arrangement of official ballots.

(a) Order of Precedence Generally. — Candidate ballot items shall be arranged on the official ballot before referenda.

(b) Order of Precedence for Candidate Ballot Items. — The State Board of Elections shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:

(1) Federal offices shall be listed before State and local offices. Member of the United States House of Representatives shall be listed immediately after United States Senator.

(2) State and local offices shall be listed according to the size of the electorate.

(3) Partisan offices, regardless of the size of the constituency, shall be listed before nonpartisan offices.

(4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before

other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices.

(5) Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office.

(c) Order of Candidates on Primary Official Ballots. — The order in which candidates shall appear on a county's official ballots in any primary ballot item shall be determined by the county board of elections using a process designed by the State Board of Elections for random selection.

(d) Order of Party Candidates on General Election Official Ballot. — Candidates in any ballot item on a general election official ballot shall appear in the following order:

(1) Nominees of political parties that reflect at least five percent (5%) of statewide voter registration, according to the most recent statistical report published by the State Board of Elections, in alphabetical order by party and in alphabetical order within the party.

(2) Nominees of other political parties, in alphabetical order by party and in alphabetical order within the party.

(3) Unaffiliated candidates, in alphabetical order.

(e) Straight-Party Voting. — Each official ballot shall be arranged so that the voter may cast one vote for a party's nominees for all offices except President and Vice President. A vote for President and Vice President shall be cast separately from a straight-party vote. The official ballot shall be prepared so that a voter may cast a straight-party vote, but then make an exception to that straight-party vote by voting for a candidate not nominated by that party or by voting for fewer than all the candidates nominated by that party. Instructions for general election ballots shall clearly advise voters of the rules in this subsection and of the statutes providing for the counting of ballots.

(f) Write-In Voting. — Each official ballot shall be so arranged so that voters may cast write-in votes for candidates except where prohibited by G.S. 163-123 or other statutes governing write-in votes. Instructions for general election ballots shall clearly advise voters of the rules of this subsection and of the statutes governing write-in voting.

(g) Order of Precedence for Referenda. — The referendum questions to be voted on shall be arranged on the official ballot in the following order:

(1) Proposed amendments to the North Carolina Constitution, in the chronological order in which the proposals were approved by the General Assembly.

(2) Other referenda to be voted on by all voters in the State, in the chronological order in which the proposals were approved by the General Assembly.

(3) Referenda to be voted on by fewer than all the voters in the State, in the chronological order of the acts by which the referenda were properly authorized. (2001-460, s. 3; 2002-158, s. 14.)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 14, effective October 10, 2002, inserted "regardless of the size of the constituency" following "Partisan offices" in subdivision (b)(3).

Article 18A.

Presidential Preference Primary Act.

§ 163-213.5. Nomination by petition.

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96(b)(1) and (2) as they relate to the chairman of the county board of elections.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections. (1971, c. 225; 1975, c. 744; 2002-159, s. 55(e).)

Effect of Amendments. — Session Laws 2002-159, s. 55(e), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, deleted the former third paragraph, which read "The group of petitioners shall pay to the chairman of the county board of elections a fee of ten cents (10¢) for each signature he is required to examine under the provisions of this section."

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

§ 163-227.3. Date by which absentee ballots must be available for voting.

(a) A board of elections shall provide absentee ballots of the kinds needed 50 days prior to the date on which the election shall be conducted unless 45 days is authorized by the State Board of Elections under G.S. 163-22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an

election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence.

(b) Second Primary. — The board of elections shall provide absentee ballots, of the kinds needed, as quickly as possible after the ballot information for a second primary has been determined. (1973, c. 1275; 1977, c. 469, s. 1; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; 1989, c. 635, s. 5; 2001-353, s. 4; 2002-159, s. 55(i).)

Effect of Amendments. — Session Laws 2002-159, s. 55(i), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, rewrote the section.

§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) A qualified voter who is eligible to vote by absentee ballot under G.S. 163-226(a) or that voter's near relative or verifiable legal guardian, shall request in writing an application for absentee ballots, so that the county board of elections receives the request not later than 5:00 P.M. on the Tuesday before the election. That written request shall be signed by the voter, the voter's near relative, or the voter's verifiable legal guardian. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the application, the county board of elections shall cause to be mailed to that voter in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and

(3) Repealed by Session Laws 1999-455, s. 10.

(4) An instruction sheet.

The ballots, envelope, and instructions shall be mailed to the voter by the county board's chairman, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(a1) Absence for Sickness or Physical Disability. — Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make written request in person for absentee ballots to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and

(3) An instruction sheet.

(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall

write or type the words "Absentee Ballot No. _____" or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications earlier than 50 days prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 50 days prior to the election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(c) At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. — During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

(d) Repealed by Session Laws 1999-455, s. 10.

(e) The State Board of Elections, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, "near relative" means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild. (1983, c. 304, s. 1; 1985, c. 759, ss. 5.1-5.5; 1991, c. 727, s. 6.3; 1993, c. 553, s. 67; 1995, c. 243, s. 1; 1999-455, s. 10; 2001-337, s. 3; 2002-159, s. 55(m).)

Effect of Amendments. — Session Laws 2002-159, s. 55(m), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, inserted the second sentence in the introductory paragraph of subsection (a).

§ 163-230.2. Method of requesting absentee ballots.

(a) Valid Types of Written Requests. — A written request for an absentee ballot as required by G.S. 163-230.1 is valid only if it is written entirely by the requester personally, or is on a form generated by the county board of elections and signed by the requester. The county board of elections shall issue a request form only to the voter seeking to vote by absentee ballot or to a person authorized by G.S. 163-230.1 to make a request for the voter. If a requester, due to disability or illiteracy, is unable to complete a written request, that requester may receive assistance in writing that request from an individual of that requester's choice.

(b) Invalid Types of Written Requests. — A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163-230.1.

(c) Rules by State Board. — The State Board of Elections shall adopt rules for the enforcement of this section. (2002-159, s. 57(a).)

Editor's Note. — Session Laws 2002-159, s. 57(b), made this section effective January 1, 2003, and applicable to all primaries and elections held on or after that date.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-274. Certain acts declared misdemeanors.

CASE NOTES

Cited in Boyce & Isley, PLLC v. Cooper, — N.C. App. —, 568 S.E.2d 803, 2002 N.C. App. LEXIS 1088 (2002).

§ 163-276. Convicted officials; removal from office.

Any public official who shall be convicted of violating any provision of Article 14A or 22 of this Chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law. (1949, c. 504; 1967, c. 775, s. 1; 1985, c. 563, s. 11.3; 2002-159, s. 21(c).)

Effect of Amendments. — Session Laws 2002-159, s. 21(c), effective October 11, 2002, substituted "Article 14A or 22" for "Article 13 or 22."

ARTICLE 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.6. Definitions.

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a

nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure."

(7) The term "corporation" means any corporation doing business in this State under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3; 1997-515, ss. 4(a)-(c), 7(b)-(d); 1999-31, ss. 1(a), (b), 2(a)-(c), 3, 4(a); 1999-424, s. 6(a), (b); 2002-159, s. 55(n).)

Effect of Amendments. — Session Laws 2002-159, s. 55(n), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, substituted "State, legislative, and judicial offices" for "State and multi-county district offices," and deleted "single-county district" preceding "county and municipal offices" in the first sentence of subdivision (1).

§ 163-278.7. Appointment of political treasurers.

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. — When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report required by this Article confidential except as necessary to conduct an audit or

investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20; 1987, c. 113, s. 1; 1995, c. 315, s. 1; 2002-159, s. 57.1(a).)

Editor's Note. — Session Laws 2002-159, s. 57.1(b) provides: "This section becomes effective January 1, 2003, and applies to any report filed on or after that date. The State Board of Elections may redact, and may authorize county boards of elections to redact, account numbers from public copies of reports filed prior to January 1, 2003."

Effect of Amendments. — Session Laws 2002-159, s. 57.1(a), added the proviso in subdivision (b)(7). See editor's note for effective date and applicability.

§ 163-278.9. Statements filed with Board.

(a) Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file with the Board under certification of the treasurer as true and correct to the best of the knowledge of that officer the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organiza-

tional report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Repealed by Session Laws 1999-31, s. 7(a), effective January 1, 2000.

(3) Postprimary Report(s). — Repealed by Session Laws 1997-515, s. 1.

(4) Preelection Report. — Repealed by Session Laws 1997-515, s. 1.

(4a) 48-Hour Report. — A political committee or political party that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before an election but after the period covered by the last report due before that election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report.

(5) Repealed by Session Laws 1985, c. 164, s. 1.

(5a) Quarterly Reports. — During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) Semiannual Reports. — If contributions are received or expenditures made for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) Repealed by Session Laws 1985, c. 164, s. 6.1.

(d) Candidates and committees for municipal offices are not subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.8 or G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be certified.

(j) Treasurers for the following entities shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of five thousand dollars ($5,000) to candidates for statewide office or makes independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer. (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3, 16; c. 730; 1981, c. 837, s. 2; 1985, c. 164, ss. 1, 6-6.2; 1987 (Reg. Sess., 1988), c. 1028, s. 6; 1991 (Reg. Sess., 1992), c. 1032, s. 10A; 1997-515, ss. 1(a), 4(d1), 5(a), 12(a); 1999-31, s. 7(a), (b); 2001-235, s. 2; 2001-419, s. 7; 2001-487, s. 97(b); 2002-159, s. 21(d).)

Effect of Amendments. — Session Laws 2002-159, s. 21(d), effective October 11, 2002, substituted "received before an election but after the period covered by the last report due before that election" for "received after the last preelection report but before an election" at the end of the first sentence of subdivision (a)(4a).

§ 163-278.9A. Statements filed by referendum committees.

(a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.

(2) Pre-Referendum Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.

(2a) 48-Hour Report. — A referendum committee that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before a referendum but after the period covered by the last report due before that referendum. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report.

(3) Final Report. — The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental

final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.

(4) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1979, c. 1073, s. 6; 1997-515, s. 12(b); 2002-159, s. 21(e).)

Effect of Amendments. — Session Laws 2002-159, s. 21(e), effective October 11, 2002, substituted "received before a referendum but after the period covered by the last report due before that referendum" for "received after the last preelection report but before an election" at the end of the first sentence of subdivision (a)(2a).

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

CASE NOTES

Standing to Challenge Campaign Finances. — Voter who sought injunctions to compel the State Elections Board to further investigate a matter that it deemed unnecessary and to compel a citizens' group to file an unnecessary additional campaign finance report failed to state cause of action. Batdorff v. N.C. State Bd. of Elections, 150 N.C. App. 108, 563 S.E.2d 43, 2002 N.C. App. LEXIS 408 (2002), cert. granted, 356 N.C. 159, 568 S.E.2d 186 (2002).

§ 163-278.13. Limitation on contributions.

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(e) This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election. This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225; 1987, c. 565, s. 15; 1993, c. 539, s. 1113; 1994, Ex. Sess., c. 24, s. 14(c); 1997-515, s. 8(a); 1999-31, s. 5(c); 2002-158, s. 2.)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 2, effective January 1, 2003, added subsection (e2).

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars.

(a) No individual, political committee, or other entity shall make any contribution anonymously, except as provided in G.S. 163-278.8(d), or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. 163-278.8(d). If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina.

(b) No individual or person shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars ($100.00) unless such contribution be in the form of a check, draft,

money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For a contribution made by credit card, the credit card account number of a contributor is not a public record.

(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S 163-278.7(b)(1). (1973, c. 1272, s. 1; 1979, c. 1073, s. 19; 1987, c. 113, s. 2; 1999-453, s. 4(a); 2001-319, s. 10(a); 2002-159, s. 55(k).)

Effect of Amendments. — Session Laws 2002-159, s. 55(k), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, added the language beginning with "credit card charge" in subsection (b).

CASE NOTES

Standing to Challenge Campaign Finances. — Voter who sought injunctions to compel the State Elections Board to further investigate a matter that it deemed unnecessary and to compel a citizens' group to file an unnecessary additional campaign finance report failed to state cause of action. Batdorff v. N.C. State Bd. of Elections, 150 N.C. App. 108, 563 S.E.2d 43, 2002 N.C. App. LEXIS 408 (2002), cert. granted, 356 N.C. 159, 568 S.E.2d 186 (2002).

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.

(a) Except as provided in subsections (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

(1) To make any contribution to a candidate or political committee (except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business) or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;

(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or

(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, except as provided in G.S. 163-278.20, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include, but not be limited to, record keeping, computer services, billings, mailings to members of the committee, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any record keeping, computer services, billings, mailings, office supplies, and office space provided on a continuing basis shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five

percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution or independent expenditure by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as the only purpose for which the corporation can be organized: "to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14) only." No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection. (1973, c. 1272, s. 1; 1975, c. 565, s. 6; 1979, c. 517, ss. 1, 2; 1985, c. 354; 1987, c. 113, s. 3; c. 565, s. 16; 1993, c. 539, ss. 1115, 1116; c. 553, s. 69; 1994, Ex. Sess., c. 24, s. 14(c); 1999-31, ss. 4(d), 5(a), 6(b); 2001-487, s. 97(a); 2002-159, s. 57.3(a), (b).)

Effect of Amendments. — Session Laws 2002-159, s. 57.3(a) and (b), effective January 1, 2003, substituted "(b), (d), (e), (f), and (g)" for "(b), (d), (e), and (f)" in the introductory language of subsection (a); and added subsection (g).

§ 163-278.22. Duties of State Board.

It shall be the duty and power of the State Board:

(1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this Article and a

prescribed uniform system for accounts required to file statements by this Article.

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

(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article.

(4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying.

(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Office of Archives and History, and shall be preserved for a period of 10 years.

(6) To prepare and publish such reports as it may deem appropriate.

(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article, and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article.

(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

(9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.

(10) To instruct the chairman and director of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

(11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.

(12) To assist county boards of elections in resolving questions arising from the administration of this Article.

(13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article.

(14) To calculate, assess, and collect civil penalties pursuant to this Article. (1973, c. 1272, s. 1; 1975, c. 798, s. 8; 1977, c. 626, s. 1; 1979, c. 500, ss. 9, 12, 13; c. 1073, s. 18; 1995, c. 243, s. 1; 1997-515, s. 7(e); 2002-159, s. 35(n).)

Effect of Amendments. — Session Laws 2002-159, s. 35(n), effective October 11, 2002, substituted "Office of Archives and History" for "Division of Archives and History" in subdivision (5); and made minor stylistic changes throughout the section.

§ 163-278.30. Candidates for federal offices to file information reports.

Candidates for nomination in a party primary or for election in a general or special election to the offices of United States Senator, member of the United States House of Representatives, President or Vice-President of the United States shall file with the Board all reports they or political committee treasurers or other agents acting for them are required to file under the

Federal Election Campaign Act of 1971, P.L. 92-225, as amended (T. 2, U.S.C. section 439). Those reports shall be filed with the Board at the times required by that act. The Board shall, with respect to those reports, have the following duties only:

(1) To receive and maintain in an orderly manner all reports and statements required to be filed with it;

(2) To preserve reports and statements filed under the Federal Election Campaign Act. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years or for such period as may be required by federal law.

(3) To make the reports and statements filed with it available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which they were received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any individual, at the expense of such individual; and

(4) To compile and maintain a current list of all statements or parts of statements pertaining to each candidate.

Any duty of a candidate to file and the State Board to receive and make available under this section may be met by an agreement between the State Board and the Federal Election Commission, the effect of which is for the Federal Election Commission to provide promptly to the State Board the information required by this section. (1973, c. 1272, s. 1; 1979, c. 500, s. 14; 2002-159, s. 55(*l*).)

Effect of Amendments. — Session Laws 2002-159, s. 55(*l*), effective January 1, 2003, and applicable to all primaries and elections held on and after that date, added the last paragraph.

§ 163-278.33. Applicability of Article 22.

Sections 163-271 through 163-278 shall be applicable to the offices covered by this Article and G.S. 163-271 through 163-278 shall be applicable to all elective offices not covered by this Article. (1973, c. 1272, s. 3; 1975, c. 50; c. 565, s. 10; 2002-159, s. 21(f).)

Effect of Amendments. — Session Laws 2002-159, s. 21(f), effective October 11, 2002, substituted "G.S. 163-271 through 163-278" for "G.S. 163-269 through 163-278."

Article 22C.

Appropriations from the North Carolina Candidates Financing Fund.

§§ 163-278.46 through 163-278.57: Repealed by Session Laws 2002-158, s. 5, effective January 1, 2003.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Article 22D.

The North Carolina Public Campaign Financing Fund.

§ 163-278.61. Purpose of the North Carolina Public Campaign Financing Fund.

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Public Campaign Financing Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter. (2002-158, s. 1.)

Editor's Note. — Session Laws 2002-158, s. 6(b), provides: "In order to pay for its costs for the 2002-2003 fiscal year of programming, design, printing, and other expenses associated with implementing this act, the Secretary of Revenue may draw funds not to exceed one hundred seventy-eight thousand six hundred dollars ($178,600) from the North Carolina Candidates Financing Fund. After drawing those funds, the Secretary of Revenue shall transfer immediately to the North Carolina Public Campaign Financing Fund any remaining funds that were contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its repeal by this section. Funds the Secretary of Revenue withdraws but then determines are not needed shall also be transferred to the North Carolina Public Campaign Financing Fund."

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Session Laws 2002-158, s. 16, made this Article effective October 10, 2002, provided that distributions from the Fund shall begin in the 2004 election year.

§ 163-278.62. Definitions.

The following definitions apply in this Article:

(1) Board. — The State Board of Elections.

(2) Candidate. — An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(3) Certified candidate. — A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.64(c).

(4) Contested primary and contested general election. — An election in which there are more candidates than the number to be elected. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.

(5) Contribution. — Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or 163-278.19.

(6) Expenditure. — Defined in G.S. 163-278.6.

(7) Fund. — The North Carolina Public Campaign Financing Fund established in G.S. 163-278.63.
(8) Independent expenditure. — Defined in G.S. 163-278.6.
(9) Maximum qualifying contributions. — An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.
(10) Minimum qualifying contributions. — An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.
(11) Nonparticipating candidate. — A candidate running for office who is not seeking to be certified under G.S. 163-278.64(c).
(12) Office. — A position on the North Carolina Court of Appeals or North Carolina Supreme Court.
(13) Participating candidate. — A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.64.
(14) Political committee. — Defined in G.S. 163-278.6.
(15) Qualifying contribution. — A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:
a. Made by any registered voter in this State.
b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.
(16) Qualifying period. — The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.
(17) Referendum committee. — Defined in G.S. 163-278.6.
(18) Trigger for rescue funds. — The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.65(b)(4). (2002-158, s. 1.)

§ 163-278.63. North Carolina Public Campaign Financing Fund established; sources of funding.

(a) Establishment of Fund. — The North Carolina Public Campaign Financing Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. — Money received from all the following sources must be deposited in the Fund:
(1) Money from the North Carolina Candidates Financing Fund.
(2) Designations made to the Public Campaign Financing Fund by individual taxpayers pursuant to G.S. 105-159.2.
(3) Any contributions made by attorneys in accordance with G.S. 105-41.
(4) Public Campaign Financing Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.
(5) Money ordered returned to the Public Campaign Financing Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign Financing Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(c) Determination of Fund Amount. — By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Public Campaign Financing Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election. (2002-158, s. 1.)

§ 163-278.64. Requirements for participation; certification of candidates.

(a) Declaration of Intent to Participate. — Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. — Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9).

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. — Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements, if they apply to that candidate:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Qualified to receive votes on the ballot as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. — The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up

to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall expend no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or the remaining money raised pursuant to subdivision (1) of this subsection. Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions and personal and family contributions permitted by subdivision (4) of this subsection.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign and may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. — A candidate may revoke, in writing to the Board, a decision to participate in the Public Campaign Financing Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund. (2002-158, s. 1.)

§ 163-278.65. Distribution from the Fund.

(a) Timing of Fund Distribution. — The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. — By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the

amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. — No funds shall be distributed.

(2) Contested primaries. — No funds shall be distributed except as provided in G.S. 163-278.67.

(3) Uncontested general elections. — No funds shall be distributed.

(4) Contested general elections. — Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. — The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding. (2002-158, s. 1.)

§ 163-278.66. Reporting requirements.

(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. — Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in excess of three thousand dollars ($3,000) in support of or opposition to a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds. After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information. (2002-158, s. 1.)

§ 163-278.67. Rescue funds.

(a) When Rescue Funds Become Available. — When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures reported in accordance with G.S. 163-278.66 of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. — Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

(c) Limit on Rescue Funds in Contested General Election. — Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.65(b)(4). (2002-158, s. 1.)

§ 163-278.68. Enforcement and administration.

(a) Enforcement by the Board. — The Board, with the advice of the Advisory Council for the Public Campaign Financing Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Public Campaign Financing Fund. — There is established under the Board the Advisory Council for the Public Campaign Financing Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Financing Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to

random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. — The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. — The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of rescue money that further the purpose and avoid the subversion of G.S. 163-278.67. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Financing Fund.

(e) Report to the Public. — The Advisory Council for the Public Campaign Financing Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures." (2002-158, s. 1.)

§ 163-278.69. Voter education.

(a) Judicial Voter Guide. — The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Financing Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days

before the primary and no more than 28 days nor fewer than seven days before the general election.

(b) Candidate Information. — The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Financing Fund, and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

(c) Disclaimer. — The Judicial Voter Guide shall contain the following statement: "The above statements do not express or reflect the opinions of the State Board of Elections." (2002-158, s. 1.)

§ 163-278.70. Civil penalty.

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control. (2002-158, s. 1.)

SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

(Effective with respect to primaries and elections held before January 1, 2004)

SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, AND DISTRICT COURT JUDGES.

(Effective with respect to primaries and elections held on or after January 1, 2004)

ARTICLE 25.

Nomination and Election of Superior and District Court Judges.

(Effective with respect to primaries and elections held before January 1, 2004)

ARTICLE 25.

Nomination and Election of Appellate, Superior, and District Court Judges.

(Effective with respect to primaries and elections held on or after January 1, 2004)

§ 163-321. (Effective with respect to primaries and elections held on or after January 1, 2004) Applicability.

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2002-158, s. 7.)

For this section as in effect with respect to primaries and elecions held before January 1, 2004 see the main volume.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and election held on or after January 1, 2004, inserted "Appellate" in the Subchapter and Article headings; and in the section inserted "justices of the Supreme Court, judges of the Court of Appeals, and."

§ 163-323. Notice of candidacy.

(a) Form of Notice. — Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____, _____.

Signed _____

(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) **(Effective with respect to primaries and elections held before January 1, 2004)** Time for Filing Notice of Candidacy. — Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(b) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Time for Filing Notice of Candidacy. — Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.

Judges of the Court of Appeals.

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. — Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. — Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. — No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in

subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) **(Effective with respect to primaries and elections held before January 1, 2004)** Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(f) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected. (1996, 2nd Ex. Sess., c. 9, s. 7; 1998-217, s. 36(a); 2001-403, s. 1; 2001-466, s. 5.1(b); 2002-158, s. 7; 2002-159, s. 21(g).)

Subsections (b) and (f) Set Out Twice. — The first version of subsections (b) and (f) set out above are effective with respect to primaries and elections held before January 1, 2004. The second version of subsections (b) and (f) set out above are effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and elections held on or after January 1, 2004, in subsection (b), added "Justices of the Supreme Court" and "Judges of the Court of Appeals" to the list of offices to which the subsection applies; and in subsection (f), inserted "justice of the Supreme Court, judge of the Court of Appeals, or" following "vacancies for the office of" and substituted "the candidate seeks election" for "he seeks election."

Session Laws 2002-159, s. 21(g), effective

October 11, 2002, substituted "director of elections" and "director", for "supervisor of elections" and "supervisor" in subsection (d).

§ 163-325. Petition in lieu of payment of filing fee.

(a) General. — Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) **(Effective with respect to primaries and elections held before January 1, 2004)** Requirements of Petition; Deadline for Filing. — If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(b) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Requirements of Petition; Deadline for Filing. — If the candidate is seeking the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2002-158, s. 7.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective with respect to elections held before January 1, 2004. The second version of subsection (b) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and elections held on or after January 1, 2004, rewrote the first and second sentences of subsection (b).

§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. — Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of

each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) **(Effective with respect to primaries and elections held before January 1, 2004)** Notification of Local Boards. — No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(b) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Notification of Local Boards. — No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. — Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2002-158, s. 7.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subsection (b) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and elections held on or after January 1, 2004, inserted "justice of the Supreme Court, judge of the Court of Appeals, and" twice in subsection (b).

§ 163-327. Vacancies of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. — If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) **(Effective with respect to primaries and elections held before January 1, 2004)** Death, Disqualification, or Resignation of Official After Election. — If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

(b) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Death, Disqualification, or Resignation of Official After Election. — If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law. (1996, 2nd Ex. Sess., c. 9, s. 7; 1999-424, s. 4(a); 2001-403, s. 1; 2002-158, s. 7.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subsection (b) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and elections held on or after January 1, 2004, inserted "justice of the Supreme Court, judge of the Court of Appeals, or" in subsection (b).

§ 163-329. (Effective with respect to primaries and elections held on or after January 1, 2004) Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. — If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. — Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.
(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.
(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.
(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 12.1; 2002-158, s. 7.)

For this section as in effect with respect to primaries and elections held before January 1, 2004 see the main volume.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and elections held on or after January 1, 2004, inserted "justice of the Supreme Court, judge of the Court of Appeals, or" twice in subsection (a) and once in subdivision (b)(1).

§ 163-332. Ballots.

(a) General. — In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) **(Effective with respect to primaries and elections held before January 1, 2004)** Ballots to Be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.
District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

(b) **(Effective with respect to primaries and elections held on or after January 1, 2004)** Ballots to Be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.
Judge of the Court of Appeals.
Superior court judge.
District court judge.

G.S. 163-332(b) is set out twice. See notes.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2001-460, s. 9; 2002-158, s. 7.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective with respect to primaries and elections held before January 1, 2004. The second version of subsection (b) set out above is effective with respect to primaries and elections held on or after January 1, 2004.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2002-158, s. 7, effective with respect to primaries and elections held on or after January 1, 2004, added "Justice of the Supreme Court" and "Judge of the Court of Appeals" to the list of offices in subsection (b) for which the county board of elections shall print official ballots.

Chapter 165.

Veterans.

Article 4.

Scholarships for Children of War Veterans.

§ 165-20. Definitions.

As used in this Article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) "Child" means a person: (i) under 25 years of age at the time of application for a scholarship, (ii) who is a domiciliary of North Carolina and is a resident of North Carolina when applying for a scholarship, (iii) who has completed high school or its equivalent prior to receipt of a scholarship awarded under this Article, (iv) who has complied with the requirements of the Selective Service System, if applicable, and (v) who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.

b. A veteran's child who was born in North Carolina and has been a resident of North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3) a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of 15 years.

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.
b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.
c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.
d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on May 7, 1975.
d1. Persian Gulf War, meaning the period beginning on August 2, 1990, and ending on the date prescribed by Presidential proclamation or concurrent resolution of the United States Congress.
e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1, of this Article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) "State educational institution" means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of Chapter 115A and Article 3 of Chapter 116 of the General Statutes of North Carolina, or the college program of the North Carolina School of the Arts, or any technical institute operated under the provisions of Chapter 115A of the General Statutes of North Carolina.

(7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2; 1971, c. 339; 1973, c. 620, s. 9; c. 755; 1975, c. 160, s. 1; 1977, c. 70, s. 27; 1985, c. 39, s. 2; c. 788; 1989, c. 767, s. 1; 1991, c. 549, s. 1; 2001-424, s. 7.1(a); 2002-126, s. 19.3(a).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 19.3(a), effective November 1, 2002, and applicable to awards made for the 2003-2004 school year, rewrote subdivision (3).

§ 165-21. Scholarship.

(a) A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:
   a. Tuition,
   b. A reasonable board allowance,
   c. A reasonable room allowance,
   d. Matriculation and other institutional fees required to be paid as a condition to remaining in said institution and pursuing the course of study selected, excluding charges or fees for books, supplies, tools and clothing.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in G.S. 165-22.1(d).

(3) Only one scholarship may be granted pursuant to this Article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive.

(4) No educational assistance shall be afforded a child under this Article after the end of an eight-year period beginning on the date the scholarship is first awarded. Those persons who have been granted a scholarship under this Article prior to the effective date of this act shall be entitled to the remainder of their period of scholarship eligibility if used prior to August 1, 2010. Whenever a child is enrolled in an educational institution and the period of entitlement ends while enrolled in a term, quarter or semester, such period shall be extended to the end of such term, quarter or semester, but not beyond the entitlement limitation of four academic years.

(b) Repealed by Session Laws 2002-126, s. 19.3(b), effective November 1, 2002.

(c) If a child is awarded a scholarship under this Article, the Commission shall notify the recipient by May 1st of the year in which the recipient enrolls in college. (1967, c. 1060, s. 8; 1969, c. 741, s. 3; 1975, c. 137, s. 1; 1989, c. 767, s. 2; 2001-424, s. 7.1(b); 2002-126, s. 19.3(b).)

Editor's Note. —

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6, is a severability clause.

Effect of Amendments. —

Session Laws 2002-126, s. 19.3(b), effective November 1, 2002, and applicable to awards made for the 2003-2004 school year, in subdivision (a)(4), substituted "an eight-year" for "a 10-year" in the first sentence, and substituted "August 1, 2010" for "August 1, 1999" in the second sentence; deleted former subsection (b) regarding awards to high-school seniors; and added subsection (c).

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded.

A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent
   a. Was killed in action or died from wounds or other causes not due to his own willful misconduct while a member of the armed forces during a period of war, or

b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States Department of Veterans Affairs.

(2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and 165-21(2) of this Article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Department of Veterans Affairs. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Administration shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Administration, but, in no event shall it predate the date of the veteran parent's death.

(3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:

a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, but less than one hundred percent (100%), as rated by the United States Department of Veterans Affairs, or

b. Was awarded a Purple Heart for wounds received as a result of an act of any opposing armed force, as a result of an international terrorist attack, or as a result of military operations while serving as part of a peacekeeping force.

(4) Class III: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:

a. Is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Department of Veterans Affairs.

b. Is deceased and who does not fall within the provisions of any other eligibility class described in G.S. 165-22(1), (2), (3), (4)a., nor (5).

c. Served in a combat zone, or waters adjacent to a combat zone, or any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal, who does not fall within the provisions of any other class described in G.S. 165-22(1), (2), (3), (4)a., or (5).

(5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the armed forces of the United States in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power. (1967, c. 1060, s. 8; 1973, cc. 197, 577; c. 620, s. 9; 1975, c. 160, s. 2; c. 167, s. 1; 1977, c. 70, s. 27; 1989, c. 767, ss. 3, 4; 1991, c. 549, s. 2; 2002-126, s. 19.3(c).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 19.3(c), effective November 1,

2002, and applicable to awards made for the 2003-2004 school year, substituted "willful" for "wilful" in subdivision (1)a; rewrote subdivision (3)b, which formerly read: "Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Department of Veterans Affairs."; deleted "or" at the end of subdivision (4)a; deleted "provided such child is less than 23 years of age at the time of application for such scholarship." at the end of subdivision (4)b; and added subdivision (4)c.

§ 165-22.1. Administration and funding.

(a) The administration of the scholarship program shall be vested in the Department of Administration, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Veterans Affairs Commission shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Veterans Affairs Commission finds that the recipient does not comply with the registration requirements of the Selective Service System or does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Administration shall maintain the primary and necessary records, and the Veterans Affairs Commission shall promulgate such rules and regulations not inconsistent with the other provisions of this Article as it deems necessary for the orderly administration of the program. It may require of State or private educational institutions, as defined in this Article, such reports and other information as it may need to carry out the provisions of this Article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Administration upon certification of enrollment by the enrolling institution.

(b) Funds for the support of this program shall be appropriated to the Department of Administration as a reserve for payment of the allocable costs for room, board, tuition, and other charges, and shall be placed in a separate budget code from which disbursements shall be made. In the event the said appropriation for any year is insufficient to pay the full amounts allocable under the provisions of this Article, such supplemental sums as may be necessary shall be allocated from the Contingency and Emergency Fund. The method of disbursing and accounting for funds allocated for payments under the provisions of this section shall be in accordance with those standards and procedures prescribed by the Director of the Budget, pursuant to the Executive Budget Act.

(c) Allowances for room and board in State educational institutions shall be at such rate as established by the Secretary of the Department of Administration.

(d) Scholarship recipients electing to attend a private educational institution shall be granted a monetary allowance for each term or other academic period attended under their respective scholarship awards. All recipients under Class I-B scholarship shall receive an allowance at one rate, irrespective of course or institution; all recipients under Classes I-A, II, III and IV shall receive a uniform allowance at a rate higher than for Class I-B, irrespective of course or institution. The amount of said allowances shall be determined by the Director of the Budget and made known prior to the beginning of each fall quarter or semester; provided that the Director of the Budget may change the allowances at intermediate periods when in his judgment such changes are necessary. Disbursements by the State shall be to the private institution concerned, for credit to the account of each recipient attending said institution. The manner of payment to any private institution shall be as prescribed by the

Department of Administration. The participation by any private institution in the program shall be subject to the applicable provisions of this Article and to examination by State auditors of the accounts of scholarship recipients attending or having attended private institutions. The Veterans Affairs Commission may defer making an award or may suspend an award in any private institution which does not comply with the provisions of this Article relating to said institutions.

(e) Irrespective of other provisions of this Article, the Veterans Affairs Commission may prescribe special procedures for adjusting the accounts of scholarship recipients who for reasons of illness, physical inability to attend class or for other valid reason satisfactory to the Veterans Affairs Commission may withdraw from State or private educational institutions prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal. Such procedures may include, but shall not be limited to, paying the recipient the dollar value of his unused entitlements for the academic period being attended, with a corresponding deduction of this period from his remaining scholarship eligibility time. (1967, c. 1060, s. 8; 1969, c. 720, ss. 4, 5; c. 741, s. 4; 1971, c. 458; 1973, c. 620, s. 9; 1975, c. 19, s. 71; c. 160, s. 3; 1977, c. 70, s. 27; 1985, c. 39, s. 3; 2002-126, s. 19.3(d).)

Editor's Note. — Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Effect of Amendments. — Session Laws 2002-126, s. 19.3(d), effective November 1, 2002, and applicable to awards made for the 2003-2004 school year, substituted "established by the Secretary of the Department of Administration" for "the Director of the Budget may determine to be reasonable" in subsection (c).

Chapter 166A.

North Carolina Emergency Management Act.

Article 1.

North Carolina Emergency Management Act of 1977.

Article 2.

Hazardous Materials Emergency Response.

Article 1.

North Carolina Emergency Management Act of 1977.

§ 166A-1. Short title.

Editor's Note. —

Session Laws 2002-180, ss. 15.1 to 15.9, establishes the Statewide Emergency Preparedness Study Commission, to study the delivery of emergency medical services in this State. The Commission is to examine the funding of the State Trauma System, analyze impediments to the seamless delivery of care to trauma victims, examine ways of improving the quality and delivery of care to trauma and emergency victims, as well as the need for additional trauma centers and improved coordination of existing centers, and examine methods of improving North Carolina's readiness to handle trauma resulting from massive disasters. The Commission is to submit a final report to the 2005 General Assembly and may submit progress reports to the 2003 General Assembly. The Commission is to terminate upon filing its final report.

§ 166A-2. Purposes.

OPINIONS OF ATTORNEY GENERAL

Governor Has Power to Aid Victims of Disaster and to Fund Programs. — The Governor has the power, during a state of disaster and with the concurrence of the Council of State, to establish programs to aid the victims of that disaster and to fund those programs from appropriations to the state's agencies and institutions. See opinion of Attorney General to Marvin K. Dorman, Jr., State Budget Officer, 1999 N.C. AG LEXIS 35 (12/1/99).

§ 166A-4. Definitions.

CASE NOTES

Preparedness Cycle of Prevention. — Injuries suffered by honorary member of a beach rescue squad in the wake of emergency efforts after a hurricane were compensable injuries because the injuries were sustained while the honorary member was engaged in emergency management services in accordance with provisions of the North Carolina Emergency Management Act; specifically, the honorary member was engaged in the never-ending preparedness cycle of prevention. Ward v. Long Beach Volunteer Rescue Squad, — N.C. App.

—, 568 S.E.2d 626, 2002 N.C. App. LEXIS 981 (2002).

§ 166A-5. State emergency management.

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. — The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Article.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
2. To delegate any authority vested in him under this Article and to provide for the subdelegation of any such authority.
3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.
4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.
7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal of the debris.
8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.
9. To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.

(2) Secretary of Crime Control and Public Safety. — The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management activities. The Secretary shall have the following powers and duties as delegated by the Governor:

a. To activate the State and local plans applicable to the areas in question and to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Article or any other provision of law.

b. To adopt the rules to implement this Article.

c. To develop a system of damage assessment through which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

d. Additional authority, duties, and responsibilities as may be prescribed by the Governor. The Secretary may subdelegate his authority to the appropriate member of his department.

(3) Functions of State Emergency Management. — The functions of the State emergency management program include:

a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
4. The allocation of the National Pharmaceutical Stockpile.
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
6. Immunization procedures.
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.

c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.

d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

f. Coordination of the use of any private facilities, services, and property.

g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.

h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.

i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.

j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network. (1951, c. 1016, ss. 3, 9; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3, 5; 1957, c. 950, s. 5; 1975, c. 734, ss. 9, 10, 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 124; 2001-214, s. 2; 2002-179, s. 12.)

Effect of Amendments. —
Session Laws 2002-179, s. 12, effective October 1, 2002, added sub-subdivision (3)b1.

OPINIONS OF ATTORNEY GENERAL

Governor Has Power to Aid Victims of Disaster and to Fund Programs. — The Governor has the power, during a state of disaster and with the concurrence of the Council of State, to establish programs to aid the victims of that disaster and to fund those programs from appropriations to the state's agencies and institutions. See opinion of Attorney General to Marvin K. Dorman, Jr., State Budget Officer, 1999 N.C. AG LEXIS 35 (12/1/99).

§ 166A-6. State of disaster.

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists.

(a1) If a state of disaster is proclaimed, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available. Upon receipt of the preliminary damage assessment, the Governor shall issue a proclamation defining the area subject to the state of disaster and proclaiming the disaster as a Type I, Type II, or Type III disaster. In determining whether the disaster shall be proclaimed as a Type I, Type II, or Type III disaster, the Governor shall follow the standards set forth below.

(1) A Type I disaster may be declared if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-8, and a written copy of the declaration has been forwarded to the Governor;

b. The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in G.S. 166A-6.01(b)(2)a.; and

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

A Type I disaster declaration may be made by the Governor prior to, and independently of, any action taken by the Small Business Administration, the Federal Emergency Management Agency, or any other federal agency. A Type I disaster declaration shall expire 30 days after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

(2) A Type II disaster may be declared if the President of the United States has issued a major disaster declaration pursuant to the Stafford Act. The Governor may request federal disaster assistance under the Stafford Act without making a Type II disaster declaration. A Type II disaster declaration shall expire six months after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months each, not to exceed a total of 12 months from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type II disaster declaration.

(3) A Type III disaster may be declared if the President of the United States has issued a major disaster declaration under the Stafford Act and:

a. The preliminary damage assessment indicates that the extent of damage is reasonably expected to meet the threshold established for an increased federal share of disaster assistance under applicable federal law and regulations; or

b. The preliminary damage assessment prompts the Governor to call a special session of the General Assembly to establish programs to meet the unmet needs of individuals or political subdivisions affected by the disaster.

A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(a2) Any state of disaster declared before July 1, 2001, shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(b) In addition to any other powers conferred upon the Governor by law, during a state of disaster, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;

(2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules and regulations made pursuant thereto;

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Article.

(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;

(4) To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering;

(5) Repealed by Session Laws 2001-214, s. 3, effective July 1, 2001.

(6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:
   1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
   2. The continued absence of the regular holder of the office; or
   3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:
   1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
   2. Upon the return of the officer in whose stead he acts; or
   3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(d) In preparation for a state of disaster, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary

and appropriate for National Guard training in preparation for disasters. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2; c. 337, s. 4; 1975, c. 734, ss. 11, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1993, c. 321, s. 181(a); 1995, c. 509, s. 125; 2001-214, s. 3.)

Editor's Note. — This section is being set out in this supplement to correct an incorrect statutory reference in subdivision (a1)(1)b.

§ 166A-6.01. State disaster assistance funds; programs.

(a) If a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance as authorized by this section. Any State funds made available by the Governor for disaster assistance may be administered through State disaster assistance programs which may be established by the Governor upon the proclamation of a state of disaster. It is the intent of the General Assembly in authorizing the Governor to make State funds available for disaster assistance and in authorizing the Governor to establish State disaster assistance programs to provide State assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

(b) Disaster Assistance Programs — Type I Disaster. — In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. — State disaster assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:
   a. Provision of temporary housing and rental assistance.
   b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.
   c. Replacement of personal property (including clothing, tools, and equipment).
   d. Repair or replacement of privately owned vehicles.
   e. Medical or dental expenses.
   f. Funeral or burial expenses resulting from the disaster.
   g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. — State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:
   a. Eligible entities shall meet the following qualifications:
      1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;
      2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one-half percent (0.5%) of the annual operating budget;
      3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act

of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and

4. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) If a Type II disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) If a Type III disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly. (2001-214, s. 4; 2001-487, s. 98; 2002-24, s. 1; 2002-159, s. 57.5.)

Editor's Note. —

Session Laws 2001-214, s. 4, enacted this section as G.S. 166A-6A. It was redesignated as G.S. 166A-6.01 at the direction of the Revision of Statutes.

Effect of Amendments. —

Session Laws 2002-24, s. 1, effective July 18, 2002, substituted "November 1, 2003" for "August 1, 2002" in subdivision (b)(2)a.3.

Session Laws 2002-159, s. 57.5, effective October 11, 2002, substituted "the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390" for "November 1, 2003" in subdivision (b)(2)a.3., as amended by Session Laws 2002-24, s. 1.

§ 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 Environmental Health 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 that has a Plume Exposure Pathway Emergency Planning Zone any part of which is located within this State. This fee shall be applied only to the costs of planning and implementing emergency response activities as 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; 2002-70, s. 5.)

Effect of Amendments. — Session Laws 2002-70, s. 5, effective 1 July 2002, in subsection (b), substituted "Division of Environmental Health" for "Division of Radiation Protection," and made minor stylistic changes.

§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which he would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include a person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the State, or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14; 1977, c. 848, s. 2; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, ss. 130, 131; 2002-179, s. 20(b).)

Effect of Amendments. — Session Laws 2002-179, s. 20(b), effective October 1, 2002, added the last sentence in subsection (d).

CASE NOTES

Cited in Ward v. Long Beach Volunteer Rescue Squad, — N.C. App. —, 568 S.E.2d 626, 2002 N.C. App. LEXIS 981 (2002).

OPINIONS OF ATTORNEY GENERAL

North Carolina Emergency Response Commission. — Members of the North Carolina Emergency Response Commission who are emergency management workers are protected from civil liability, except for gross negligence or intentional wrongdoing, while they perform emergency management functions. See Opinion of Attorney General to Eric Tolbert, Chairman, N.C. Emergency Response Commission, 2000 N.C. AG LEXIS 14 (9/6/2000).

Article 2.

Hazardous Materials Emergency Response.

§ 166A-20. Title, purpose.

(a) This Article may be cited as the "North Carolina Hazardous Materials Emergency Response Act."

(b) The purpose of this Article is to establish a system of regional response to hazardous materials emergencies and terrorist incidents in the State to protect the health and safety of its citizens. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(a).)

Effect of Amendments. — Session Laws 2002-179, s. 21(a), effective October 1, 2002, inserted "and terrorist incidents" in subsection (b).

§ 166A-21. Definitions.

As used in this Article:

(1) "Hazardous materials emergency response team" or "hazmat team" means an organized group of persons specially trained and equipped to respond to and control actual or potential leaks or spills of hazardous materials.

(2) "Hazardous material" means any material defined as a hazardous substance under 29 Code of Federal Regulations § 1910.120(a)(3).

(3) "Hazardous materials incident" or "hazardous materials emergency" means an uncontrolled release or threatened release of a hazardous

substance requiring outside assistance by a local fire department or hazmat team to contain and control.

(4) "Regional response team" means a hazmat team under contract with the State to provide response to hazardous materials emergencies occurring outside the hazmat team's local jurisdiction at the direction of the Department of Crime Control and Public Safety, Division of Emergency Management.

(5) "Secretary" means the Secretary of the Department of Crime Control and Public Safety.

(6) "Technician-level entry capability" means the capacity of a hazmat team, in terms of training and equipment as specified in 29 Code of Federal Regulations § 1910.120, to respond to a hazardous materials incident requiring affirmative measures, such as patching, plugging, or other action necessary to stop and contain the release of a hazardous substance at its source.

(7) "Terrorist incident" means activities that occur within the territorial jurisdiction of the United States, involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, and are intended to do one of the following:

a. Intimidate or coerce a civilian population.

b. Influence the policy of a government by intimidation or coercion.

c. Affect the conduct of a government by mass destruction, assassination, or kidnapping. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 1997-456, s. 27; 2002-179, s. 21(b).)

Effect of Amendments. — Session Laws 2002-179, s. 21(b), effective October 1, 2002, added subdivision (7).

§ 166A-22. Hazardous materials emergency response program.

(a) The Secretary shall adopt rules establishing a regional response program for hazardous materials emergencies and terrorist incidents, to be administered by the Division of Emergency Management. To the extent possible, the regional response program shall be coordinated with other emergency planning activities of the State. The regional response program shall include at least six hazmat teams located strategically across the State that are available to provide regional response to hazardous materials or terrorist incidents requiring technician-level entry capability and 24-hour dispatch and communications capability at the Division of Emergency Management Operations Center. The rules for the program shall include:

(1) Standards, including training, equipment, and personnel standards required to operate a regional response team with technician-level entry capability.

(2) Guidelines for the dispatch of a regional response team to a hazardous materials or terrorist incident.

(3) Guidelines for the on-site operations of a regional response team.

(4) Standards for administration of a regional response team, including procedures for reimbursement of response costs.

(5) Refresher and specialist training for members of regional response teams.

(6) Procedures for recovering the costs of a response to a hazardous materials or terrorist incident from persons determined to be responsible for the emergency.

(7) Procedures for bidding and contracting for the provision of a hazmat team for the regional response program.

(8) Criteria for evaluating bids for the provision of a hazmat team for regional response.

(9) Delineation of the roles of the regional response team, local fire department and local public safety personnel, the Division of Emergency Management's area coordinator, and other State agency personnel responding to the scene of a hazardous materials or terrorist incident.

(b) In developing the program and adopting rules, the Secretary shall consult with the Regional Response Team Advisory Committee established pursuant to G.S. 166A-24. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(c).)

Effect of Amendments. — Session Laws 2002-179, s. 21(c), effective October 1, 2002, inserted "and terrorist incidents" and inserted "or terrorist" preceding "incidents" in the introductory paragraph of subsection (a); and inserted "or terrorist" preceding "incident" in subdivisions (a)(2), (a)(6), and (a)(9).

§ 166A-23. Contracts; equipment loans.

(a) The Secretary may contract with any unit or units of local government for the provision of a regional response team to implement the regional response program. Contracts are to be let consistent with the bidding and contract standards and procedures adopted pursuant to G.S. 166A-22(a)(7) and (8). In entering into contracts with units of local government, the Secretary may agree to provide:

(1) A loan of equipment, including a hazmat vehicle, necessary for the provision technician-level entry capability;

(2) Reimbursement of personnel costs when a regional response team is authorized by the Department to respond to a hazmat or terrorist incident, including the cost of call-back personnel;

(3) Reimbursement for use of equipment and vehicles owned by the regional response team;

(4) Replacement of disposable materials and damaged equipment;

(5) Costs of medical surveillance for members of the regional response team, including baseline, maintenance, and exit physicals;

(6) Training expenses; and

(7) Other provisions agreed to by the Secretary and the regional response team.

(b) The Secretary shall not agree to provide reimbursement for:

(1) Costs of clean-up activities, after a spill or leak has been contained;

(2) Local response not requiring technician-level entry capability; or

(3) Standby time.

(c) Any contract entered into between the Secretary and a unit of local government for the provision of a regional response team shall specify that the members of the regional response team, when performing their duties under the contract, shall not be employees of the State and shall not be entitled to benefits under the Teachers' and State Employees' Retirement System or for the payment by the State of federal social security, employment insurance, or workers' compensation.

(d) Regional response teams that have the use of a State hazmat vehicle may use the vehicle for local purposes. Where a State vehicle is used for purposes other than authorized regional response to a hazardous materials or terrorist incident, the regional response team shall be liable for repairs or replacements directly attributable to the nonauthorized response. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(d).)

Effect of Amendments. — Session Laws 2002-179, s. 21(d), effective October 1, 2002, inserted "or terrorist" preceding "incident" in subdivision (a)(2) and subsection (d).

§ 166A-24. Immunity of Regional Response Team Personnel.

Members of a regional response team shall be protected from liability under the provisions of G.S. 166A-14(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(e).)

Effect of Amendments. — Session Laws 2002-179, s. 21(e), effective October 1, 2002, inserted "or terrorist" preceding "incident."

§ 166A-25. Right of entry.

A regional response team, when authorized to respond to a release or threatened release of hazardous materials or when authorized to respond to a terrorist or threatened or imminent terrorist incident, may enter onto any private or public property on which the release or terrorist incident has occurred or on which there is an imminent threat of such release or terrorist incident. A regional response team may also enter, under such circumstances, any adjacent or surrounding property in order to respond to the release or threatened release of hazardous material or to monitor, control, and contain the release or perform any other action in mitigation of a hazardous materials or terrorist incident. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(f).)

Effect of Amendments. — Session Laws 2002-179, s. 21(f), effective October 1, 2002, rewrote the first sentence.

§ 166A-26. Regional Response Team Advisory Committee.

(a) The Regional Response Team Advisory Committee is created. The Secretary shall appoint the members of the Committee and shall designate the chair. In making appointments, the Secretary shall take into consideration the expertise of the appointees in the management of hazardous materials emergencies. The Secretary shall appoint one representative from:

(1) The Division of Emergency Management;
(2) The North Carolina Highway Patrol;
(3) The State Fire and Rescue Commission of the Department of Insurance;
(4) The Department of Environment and Natural Resources;
(5) The Department of Transportation;
(6) The Department of Agriculture and Consumer Services;
(7) The Chemical Industry Council of North Carolina;
(8) The N.C. Association of Hazardous Materials Responders;
(9) Each regional response team;
(10) The State Bureau of Investigation.

In addition to the persons listed above, the Secretary shall appoint to the Advisory Committee three persons designated jointly by the North Carolina Fire Chiefs Association and the North Carolina State Firemen's Association.

(b) The Advisory Committee shall meet on the call of the chair, or at the request of the Secretary; provided that the Committee shall meet no less than once every three months. The Department of Crime Control and Public Safety

shall provide space for the Advisory Committee to meet. The Department also shall provide the Advisory Committee with necessary support staff and supplies to enable the Committee to carry out its duties in an effective manner.

(c) Members of the Advisory Committee shall serve without pay, but shall receive travel allowance, lodging, subsistence, and per diem as provided by G.S. 138-5.

(d) The Regional Response Team Advisory Committee shall advise the Secretary on the establishment of the program for regional response to hazardous materials emergencies in the State. The Committee shall also evaluate and advise the Secretary of the need for additional regional response teams to serve the State. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 1997-261, s. 108; 1997-443, s. 11A.123; 2002-179, s. 21(g).)

Effect of Amendments. — Session Laws 2002-179, s. 21(g), effective October 1, 2002, substituted "State Fire and Rescue Commission of the Department of Insurance" for "Fire and Rescue Commission" in subdivision (a)(3); added subdivision (a)(10); and inserted "State" preceding "Firemen's Association" in the last paragraph of subsection (a).

Chapter 168.

Handicapped Persons.

Article 3.

Family Care Homes.

Article 3.

Family Care Homes.

§ 168-21. Definitions.

As used in this Article:

(1) "Family care home" means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.

(2) "Handicapped person" means a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b. (1981, c. 565, s. 1; 1985, c. 589, s. 62; 1995, c. 535, s. 36; 2002-159, s. 24.)

Effect of Amendments. — Session Laws 2002-159, s. 24, effective October 11, 2002, substituted "means a home" for "means an adult care home" in subdivision (1).

Chapter 168A.

Persons With Disabilities Protection Act.

§ 168A-2. Statement of purpose.

(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State.

(b) The General Assembly finds that: the practice of discrimination based upon a disabling condition is contrary to the public interest and to the principles of freedom and equality of opportunity; the practice of discrimination on the basis of a disabling condition threatens the rights and proper privileges of the inhabitants of this State; and such discrimination results in a failure to realize the productive capacity of individuals to their fullest extent. (1985, c. 571, s. 1; 1999-160, s. 1; 2002-163, s. 1.)

Effect of Amendments. — Session Laws 2002-163, s. 1, effective January 1, 2003, inserted "ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to" following "The purpose of this Chapter is to" in subsection (a).

§ 168A-3. Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) "Disabling condition" means any condition or characteristic that renders a person a person with a disability.

(1a) "Discriminatory practice" means any practice prohibited by this Chapter.

(2) "Employer" means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) "Employment agency" means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as § 168A-3(7).

(4a) "Information technology" has the same meaning as in G.S. 147-33.81. The term also specifically includes information transaction machines.

(5) Recodified as § 168A-3(1).

(6) "Labor organization" means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) "Person" includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) "Person with a disability" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(8) "Place of public accommodations" includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.

(9) "Qualified person with a disability" means:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) "Reasonable accommodations" means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities

accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that "reasonable accommodation" does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or
2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or
3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or
4. Alter, modify, change or deviate from bona fide seniority policies or practices; or
5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or
6. Repealed by Session Laws 2002-163, s. 2, effective January 1, 2003.
7. Make any changes that would impose on the employer an undue hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

(11) "Undue hardship" means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.
b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.
c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.
d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity. (1985, c. 571, s. 1; 1999-160, s. 1; 1999-456, s. 44; 2002-163, s. 2.)

Editor's Note. — Session Laws 2002-163, s. 2, in repealing sub-subdivision (10)a.6, redesignated sub-subdivision (10)a.7 as (10)a.6. The numbering of the sub-subdivisions has been retained pursuant to the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2002-163, s. 2, effective January 1, 2003, inserted subdivision (4a); repealed former sub-subdivision (10)a.6. pertaining to making physical changes to accomodate persons with disabilities; rewrote former sub-subdivision (10)a.7. as present sub-subdivision (10)a.6.; and added subdivision (11).

§ 168A-7. (See Editor's note for applicability) Discrimination in public service.

(a) It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity; provided that the aids and adaptations do not impose an undue hardship on the entity involved. This subsection includes equivalent services provided via information technology.

(b) A State department, institution, or agency, any political subdivision of the State, and any person that contracts with these entities for the delivery of public services shall administer its services programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities. (1985, c. 571, s. 1; 1999-160, s. 1; 2002-163, s. 3.)

Editor's Note. — Session Laws 2002-163, s. 5, provides that the provisions of G.S. 168A-7 added by s. 3 of the act apply to information technology placed into service on or after January 1, 2004.

Effect of Amendments. — Session Laws 2002-163, s. 3, effective January 1, 2003, redesignated the previously undesignated provisions as subsection (a); added subsection (b); and added the last sentence in subsection (a). See editor's note for applicability.

§ 168A-10.1. Dispute resolution in public services discrimination cases.

The North Carolina Office on the Americans with Disabilities Act shall adopt rules to provide a consistent and comprehensive mechanism for accommodating requests regarding accessibility to public services, and shall adopt dispute resolution procedures to govern responsiveness to those requests. This section does not authorize the North Carolina Office on the Americans with Disabilities Act to adopt rules or procedures that apply to the resolution of matters constituting grounds for a contested case under Chapter 126 of the General Statutes. (2002-163, s. 4.)

Editor's Note. — Session Laws 2002-163, s. 5, made this section effective January 1, 2003.

Constitution of North Carolina

Article XIV.

Miscellaneous.

Sec.
5. Conservation of natural resources.

ARTICLE I

DECLARATION OF RIGHTS

Sec. 3. Internal government of the State.

CASE NOTES

Cited in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Sec. 5. Allegiance to the United States.

CASE NOTES

Cited in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Sec. 6. Separation of powers.

CASE NOTES

I. In General.

I. IN GENERAL.

Punitive Damages Cap. — Section 1D-25, which places a cap on punitive damages, did not unconstitutionally violate the principle of separation of powers by exercising the power of remittitur, because the cap on punitive damages is different from remittitur, in that it requires an award to be limited after a proper jury trial, while remittitur, under G.S. 1A-1, Rule 59, allows a new trial for excessive damages awarded under the influence of passion or prejudice. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

Amendment of Judicially Imposed Criminal Sentences by Corrections Department. — The legislative, executive, and supreme judicial powers of the State government are separate and distinct from each other; therefore, by independently amending sentences imposed by trial courts to reflect compliance with its interpretation of statutory authority, the Corrections Department usurped the power of the judiciary and violated the separation of powers doctrine. Hamilton v. Freeman, 147 N.C. App. 195, 554 S.E.2d 856, 2001 N.C. App. LEXIS 1147 (2001), cert. denied, 355 N.C. 285, 560 S.E.2d 802 (2002).

Sec. 14. Freedom of speech and press.

Legal Periodicals. —
For article, "Political Patronage and North Carolina Law: Is Political Conformity With the Sheriff a Permissible Job Requirement for Deputies?," see 79 N.C.L. Rev. 1743 (2001).

CASE NOTES

III. Restrictions on Exercise of Rights.

III. RESTRICTIONS ON EXERCISE OF RIGHTS.

Employee's Right to Free Speech. —
Administrator's claims under 42 U.S.C.S § 1983 against the school board for violation of the administrator's free speech rights under the North Carolina Constitution failed as (1) the administrator's speech involved not only disciplinary practices and the use of a time-out room, but also the administrator's disputes with a supervisor so that the speech was more in the capacity as a public school administrator than as a private citizen; and (2) the school board's interest in maintaining effective functioning of the school by removing the administrative, a disruptive and dividing influence, far outweighed the administrator's interest in First Amendment expression. Love-Lane v. Martin, 201 F. Supp. 2d 566, 2002 U.S. Dist. LEXIS 17219 (M.D.N.C. 2002).

Sec. 15. Education.

CASE NOTES

Cited in In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002), cert. granted, 356 N.C. 163, 569 S.E.2d 282 (2002).

Sec. 16. Ex post facto laws.

CASE NOTES

Use of Adjudication of Juvenile Delinquency Permitted. —
Allowing the State to submit defendant's adjudication of delinquency as an aggravating circumstance at sentencing in his capital murder trial did not violate the prohibition against ex post facto laws; the enhanced sentence was not to be viewed as either a new jeopardy or additional penalty for the earlier crime since it was a stiffened penalty for the latest crime, which was considered to be an aggravated offense because a repetitive one. State v. Wiley, 355 N.C. 592, 565 S.E.2d 22, 2002 N.C. LEXIS 552 (2002).

Sec. 18. Courts shall be open.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Punitive Damages Cap. — Section 1D-25, which places a cap on punitive damages, is not unconstitutional under the open courts provision, because it does not limit the recovery of actual damages. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

Cited in Best v. Wayne Mem. Hosp., 147 N.C. App. 628, 556 S.E.2d 629, 2001 N.C. App. LEXIS 1259 (2001); State v. Wiley, 355 N.C. 592, 565 S.E.2d 22, 2002 N.C. LEXIS 552 (2002).

Sec. 19. Law of the land; equal protection of the laws.

CASE NOTES

I. GENERAL CONSIDERATION.

Cited in Best v. Wayne Mem. Hosp., 147 N.C. App. 628, 556 S.E.2d 629, 2001 N.C. App. LEXIS 1259 (2001); N.G. Purvis Farms, Inc. v. Howard, — F.3d —, 2002 U.S. App. LEXIS 11977 (4th Cir. June 18, 2002); State v. McCail, — N.C. App. —, 565 S.E.2d 96, 2002 N.C. App. LEXIS 686 (2002); State v. Rhodes, — N.C. App. —, 565 S.E.2d 266, 2002 N.C. App. LEXIS 710 (2002), cert. denied, 356 N.C. 173, 569 S.E.2d 273 (2002); State v. Wiley, 355 N.C. 592, 565 S.E.2d 22, 2002 N.C. LEXIS 552 (2002).

III. EQUAL PROTECTION.

Whole County Provisions. — The whole county provisions of N.C. Const., Art. II, §§ 3(3) and 5(3) are interpreted consistent with federal law and reconciled with equal protection requirements under the state Constitution by requiring the formation of single-member districts in North Carolina legislative redistricting plans. The boundaries of such single-member districts, however, may not cross county lines except as outlined in the court's opinion. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Single and Multi-Member Voting Districts. — Use of both single-member and multi-member districts within the same redistricting plan violates the equal protection clause of the state Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

While instructive as to how multi-member districts may be used compatibly with "one-person, one-vote" principles, N.C. Const., Art. II, §§ 3(3) and 5(3) are not affirmative constitutional mandates and do not authorize use of both single-member and multi-member districts in a manner violative of the fundamental right of each North Carolinian to substantially equal voting power. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Punitive Damages Cap Upheld. — Section 1D-25, placing a cap on an award of punitive damages, did not treat similarly situated persons differently without compelling reason or rational justification; no fundamental right is involved and the statute makes no mention of suspect classifications, subjecting it to rational basis review, and it bears a rational relationship to a legitimate governmental interest in the state's economic development. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

IV. RIGHTS OF DEFENDANTS.

A. In General.

Defendant's right to prepare a defense was violated when the trial court, after ordering the State to turn over test-fired bullets and underlying data examinations for a defense ballistics examination, upon the State's revelation that it had lost the original shells, refused to require the State to retest the weapon in question and allowed the State's ballistics expert to testify. State v. Canady, 355 N.C. 242, 559 S.E.2d 762, 2002 N.C. LEXIS 176 (2002).

E. Time to Prepare Defense.

And to Prepare His Defense. —

Trial court did not err in denying the defendant's motions for a continuance before trial and during trial as the defendant failed to prove he would acquire proof of his innocence because of the continuance. State v. Marecek, — N.C. App. —, 568 S.E.2d 237, 2002 N.C. App. LEXIS 967 (2002).

VII. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

E. Illustrative Cases.

Punitive Damages Cap. — Section 1D-25, placing a cap on an award of punitive damages,

did not take property without just compensation, infringing on a fundamental right, because punitive damages are not property belonging to an individual. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

XI. ILLUSTRATIVE CASES.

A. Statutes, Proceedings, etc., Upheld.

County Sign Ordinance. — Since the restrictions in the Sign Control Ordinance of Transylvania County, North Carolina, are rationally related to the legitimate state concern of protecting the health, welfare, and safety of the citizens of the State of North Carolina, the ordinance does not violate the equal protection guarantee of N.C. Const. art. I, § 19. Transylvania County v. Moody, — N.C. App. —, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

OPINIONS OF ATTORNEY GENERAL

Housing of Inmates from Other States in Private Prisons. — North Carolina can permanently ban the housing of inmates from other states in private prisons if they are not federal inmates. See opinion of Attorney General to Senator Frank W. Ballance, Jr. and Representative E. David Redwine, 2001 N.C. AG LEXIS 5 (3/28/2001).

Sec. 20. General warrants.

CASE NOTES

II. Warrantless Searches.
III. Search Warrants.

II. WARRANTLESS SEARCHES.

Informant's tip was sufficiently reliable to justify an investigative stop of the vehicle in which defendant was a passenger, as well as a brief investigative detention of the vehicle's occupants, to search for weapons. State v. Sanchez, 147 N.C. App. 619, 556 S.E.2d 602, 2001 N.C. App. LEXIS 1238 (2001), cert. denied, 355 N.C. 220, 560 S.E.2d 358 (2002).

III. SEARCH WARRANTS.

Defendant's Rights Not Violated. — While defendant was an overnight guest in the premises searched pursuant to a search warrant, he did not show that he personally had an expectation of privacy there, or that such an expectation was reasonable; therefore, he had no standing to object to the search of the premises. State v. Sanchez, 147 N.C. App. 619, 556 S.E.2d 602, 2001 N.C. App. LEXIS 1238 (2001), cert. denied, 355 N.C. 220, 560 S.E.2d 358 (2002).

Sec. 22. Modes of prosecution.

CASE NOTES

Offenses Which Indictment Will Support. — Where the indictment was insufficient to allege attempted first degree murder because the indictment on its face failed to include the essential element of malice aforethought, but the indictment was sufficient to allege voluntary manslaughter, the case could be remanded based on the jury's verdict for sentencing and entry of judgment for attempted voluntary manslaughter. State v. Bullock, — N.C. App. —, 566 S.E.2d 768, 2002 N.C. App. LEXIS 885 (2002).

Sec. 23. Rights of accused.

CASE NOTES

I. General Consideration.
III. Right of Confrontation.
A. In General.

I. GENERAL CONSIDERATION.

Applied in State v. Quick, — N.C. App. —, 566 S.E.2d 735, 2002 N.C. App. LEXIS 878 (2002).

Cited in State v. Ward, 354 N.C. 231, 555 S.E.2d 251, 2001 N.C. LEXIS 1097 (2001); State v. Call, 353 N.C. 400, 545 S.E.2d 190, 2001 N.C. LEXIS 429 (2001), cert. denied, 534 U.S. 1046, 122 S. Ct. 628, 151 L. Ed. 2d 548 (2001); In re Allison, 143 N.C. App. 586, 547 S.E.2d 169, 2001 N.C. App. LEXIS 329 (2001); State v. Mason, 144 N.C. App. 20, 550 S.E.2d 10, 2001 N.C. App. LEXIS 339 (2001); State v. Wiley, 355 N.C. 592, 565 S.E.2d 22, 2002 N.C. LEXIS 552 (2002).

III. RIGHT OF CONFRONTATION.

A. In General.

When Right Not Denied by Refusing Continuance. —

Trial court did not err in denying the defendant's motions for a continuance before trial and during trial as the defendant failed to prove he would acquire proof of his innocence because of the continuance. State v. Marecek, — N.C. App. —, 568 S.E.2d 237, 2002 N.C. App. LEXIS 967 (2002).

B. Illustrative Cases.

Private Discussions with Prospective Jurors. — In capital case, trial court's error in having unrecorded private discussions with prospective jurors was harmless beyond a reasonable doubt, as the record did not indicate that any action was taken by the trial judge as a result of these discussions. State v. Scott, — N.C. App. —, 564 S.E.2d 285, 2002 N.C. App. LEXIS 576 (2002).

State's Failure to Turn Over Ballistics Testing. — Defendant's right to confrontation was violated when the trial court, after ordering the State to turn over test-fired bullets and underlying data examinations for a defense ballistics examination, upon the State's revelation that it had lost the original shells, refused to require the State to retest the weapon in question and allowed the State's ballistics expert to testify. State v. Canady, 355 N.C. 242, 559 S.E.2d 762, 2002 N.C. LEXIS 176 (2002).

V. SELF-INCRIMINATION.

A. In General.

Miranda Not Applicable to Abuse and Neglect Proceedings. — In case involving termination of parental rights, admission of mother's confession to injuring her child was not a violation of her Miranda rights; Miranda does not apply to civil juvenile abuse and neglect proceedings. In re Pittman, 149 N.C. App. 756, 561 S.E.2d 560, 2002 N.C. App. LEXIS 303 (2002).

Sec. 24. Right of jury trial in criminal cases.

CASE NOTES

I. IN GENERAL.

Cited in State v. Anthony, 354 N.C. 372, 555 S.E.2d 557, 2001 N.C. LEXIS 1222 (2001); In re Allison, 143 N.C. App. 586, 547 S.E.2d 169, 2001 N.C. App. LEXIS 329 (2001); State v. Brothers, — N.C. App. —, 564 S.E.2d 603, 2002 N.C. App. LEXIS 653 (2002).

II. UNANIMOUS VERDICT OF TWELVE.

Trial judge correctly instructed jury, etc.

Trial court committed no error in its instruction to the jury concerning the charges of indecent liberties with a child and first degree sexual offense by not requiring a finding of unanimity to each charged offense. State v. Yearwood, 147 N.C. App. 662, 556 S.E.2d 672, 2001 N.C. App. LEXIS 1256 (2001).

Coercion of Unanimous Verdict. — Jury could have reasonably concluded that it was required to deliberate until it reached a unanimous verdict, which was a violation of G.S. 15A-1235(c) and N.C. Const. art. I, § 24, where the trial court encouraged deliberations despite being told three times that jury was deadlocked, and it did not address juror's request to be absent the next day so he could attend his wife's surgery. State v. Dexter, — N.C. App. —, 566 S.E.2d 493, 2002 N.C. App. LEXIS 750 (2002).

Sec. 25. Right of jury trial in civil cases.

CASE NOTES

I. In General.

I. IN GENERAL.

Cap on Punitive Damages. — Section 1D-25, which places a cap on punitive damages, does not violate injured parties' rights to a jury trial, because their right to punitive damages is not a property interest, and they only have a right to a civil jury trial concerning property. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

Sec. 26. Jury service.

CASE NOTES

Excuse Based on Age. — Statutory scheme allowing trial judge to exercise his discretion to excuse jurors over the age of 65 has a rational basis and is not constitutionally infirm. State v. Rogers, 355 N.C. 420, 562 S.E.2d 859, 2002 N.C. LEXIS 429 (2002).

Violation of Defendant's Rights Was Not Shown. —

Defendant was not denied a fair trial where the percentage of African-American jurors in the jury pool at his trial was 8.67 percent and the percentage of African-American jurors in the county was 20.8 percent; defendant presented no evidence showing that the alleged deficiency of African-Americans on the jury was because of the systematic exclusion of this group in the jury-selection process, and the prosecutor provided race neutral explanations for the peremptory challenges of two prospective African-American jurors.

Sec. 32. Exclusive emoluments.

CASE NOTES

Punitive Damages Cap. — Section 1D-25, placing a cap on an award of punitive damages, is not unconstitutional special legislation, because it applies equally to all defendants and creates no distinction between groups. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

ARTICLE II

LEGISLATIVE

Sec. 3. Senate districts; apportionment of Senators.

Editor's Note. — The United States Department of Justice, by letter dated July 12, 2002, withdrew its November 30, 1981 objection interposed under Section 5 of the Voting Rights Act of 1965 to the 1968 amendment (Session Laws 1967, c. 640) of this section. That amendment, approved by the voters, added subsection (3), which provides that no county shall be divided in the formation of a Senate district.

CASE NOTES

Whole County Provisions. — The People's insertion of a whole county requirement within their Constitution was not an historical accident. Rather, this provision was inserted by the People as an objective limitation upon the authority of incumbent legislators to redistrict and reapportion in a manner inconsistent with the importance that North Carolinians traditionally have placed upon their respective county units in terms of their relationship to

State government. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

The whole county provisions of N.C. Const., Art. II, §§ 3(3) and 5(3) are interpreted consistent with federal law and reconciled with equal protection requirements under the state Constitution by requiring the formation of single-member districts in North Carolina legislative redistricting plans. The boundaries of such single-member districts, however, may not cross county lines except as outlined in the court's opinion. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Single and Multi-Member Voting Districts. — Use of both single-member and multi-member districts within the same redistricting plan violates the equal protection clause of the state Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

While instructive as to how multi-member districts may be used compatibly with "one-person, one-vote" principles, N.C. Const., Art. II, §§ 3(3) and 5(3) are not affirmative constitutional mandates and do not authorize use of both single-member and multi-member districts in a manner violative of the fundamental right of each North Carolinian to substantially equal voting power. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

2001 Legislative Redistricting Plans. — Because the General Assembly enacted its 2001 legislative redistricting plans (Session Laws 2001-458 and 2001-459) in violation of the whole county provisions of N.C. Const., Art. II, §§ 3(3) and 5(3), these plans are unconstitutional and are therefore void. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Sec. 5. Representative districts; apportionment of Representatives.

Editor's Note. — The United States Department of Justice, by letter dated July 12, 2002, withdrew its November 30, 1981 objection interposed under Section 5 of the Voting Rights Act of 1965 to the 1968 amendment (Session Laws 1967, c. 640) of this section. That amendment, approved by the voters, added subsection (3), which provides that no county shall be divided in the formation of a Representative district.

CASE NOTES

Whole County Provisions. — The People's insertion of a whole county requirement within their Constitution was not an historical accident. Rather, this provision was inserted by the People as an objective limitation upon the authority of incumbent legislators to redistrict and reapportion in a manner inconsistent with the importance that North Carolinians traditionally have placed upon their respective county units in terms of their relationship to State government. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

The whole county provisions of N.C. Const., Art. II, §§ 3(3) and 5(3) are interpreted consistent with federal law and reconciled with equal protection requirements under the state Constitution by requiring the formation of single-member districts in North Carolina legislative redistricting plans. The boundaries of such single-member districts, however, may not cross county lines except as outlined in the court's opinion. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Single and Multi-Member Voting Districts. — Use of both single-member and multi-member districts within the same redistricting plan violates the equal protection clause of the state Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

While instructive as to how multi-member districts may be used compatibly with "one-person, one-vote" principles, N.C. Const., Art. II, §§ 3(3) and 5(3) are not affirmative constitutional mandates and do not authorize use of both single-member and multi-member districts in a manner violative of the fundamental right of each North Carolinian to substantially equal voting power. Stephenson v. Bartlett, 355

N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

2001 Legislative Redistricting Plans. — Because the General Assembly enacted its 2001 legislative redistricting plans (Session Laws 2001-458 and 2001-459) in violation of the whole county provisions of N.C. Const., Art. II, §§ 3(3) and 5(3), these plans are unconstitutional and are therefore void. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Sec. 7. Qualifications for Representative.

OPINIONS OF ATTORNEY GENERAL

A person must be 21 years old by the date of the general election in order to be elected to the House of Representatives. See opinion of Attorney General to Mr. William R. Gilkeson, Jr., Staff Attorney, Research Division, Legislative Services Office, North Carolina General Assembly, 1999 N.C. AG LEXIS 33 (11/3/99).

Sec. 21. Style of the acts.

CASE NOTES

Placement of Enacting Clause. — Article II, Section 21 of the state Constitution does not require the enacting clause "The General Assembly of North Carolina enacts:" to be included in the actual law as codified; rather, the enacting clause is generally included in the preamble to an act. Hence, where the Session Laws to each of the sections of Chapter 20 under which defendant was prosecuted contained the proper enacting clause language required by the Constitution, defendant's allegation that the court lacked subject matter jurisdiction over his case was without merit. State v. Phillips, 149 N.C. App. 310, 560 S.E.2d 852, 2002 N.C. App. LEXIS 185 (2002), appeal dismissed, 355 N.C. 499, 564 S.E.2d 230 (2002).

Cited in State v. Phillips, — N.C. App. —, 568 S.E.2d 300, 2002 N.C. App. LEXIS 975 (2002).

Sec. 24. Limitations on local, private, and special legislation.

CASE NOTES

I. General Consideration.
II. Health, Sanitation and Nuisances.

I. GENERAL CONSIDERATION.

Cap on Punitive Damages. — Section 1D-25, placing a cap on an award of punitive damages, is not unconstitutional special legislation because it does not constitute remittitur. Rhyne v. K-Mart Corp., 149 N.C. App. 672, 562 S.E.2d 82, 2002 N.C. App. LEXIS 316 (2002).

II. HEALTH, SANITATION AND NUISANCES.

Regulation of Use and Storage of Explosives. — G.S. 153A-128, which permitted the county to enact ordinances regulating the use and storage of explosives, did not constitute an unlawful local law under N.C. Const. art. II, § 24, since it applied to all counties in the state. S. Blasting Servs. v. Wilkes County, 288 F.3d 584, 2002 U.S. App. LEXIS 7853 (4th Cir. 2002).

OPINIONS OF ATTORNEY GENERAL

Statutory provisions that waived or modified the state competitive bid requirements for certain construction projects by allowing a board of education to

utilize alternative contracting methods to those normally specified for local school boards did not violate the prohibition against local or special acts regulating trade; this was despite the fact that the statutes applied to only one board of education and were, therefore, local in nature, because the clear intent of the legislation was to regulate the bid process, rather than trade, and the law operated uniformly on all potential contractors or bidders for the covered construction projects. See opinion of Attorney General to Representative Andrew T. Dedmon, North Carolina General Assembly, 1999 N.C. AG LEXIS 22 (10/18/99).

ARTICLE IV

JUDICIAL

Sec. 18. District Attorney and prosecutorial districts.

CASE NOTES

Cited in State v. Ward, 354 N.C. 231, 555 S.E.2d 251, 2001 N.C. LEXIS 1097 (2001).

Sec. 19. Vacancies.

CASE NOTES

Amendment to § 7A-16 Held Unconstitutional. — Amendment to G.S. 7A-16 effected by Session Laws 2000-67, s. 15.5, which expanded the size of the state Court of Appeals from 12 judges to 15 and which allowed the newly appointed judges to serve until the year 2005 before being required to face a retention election, was unconstitutional to the extent that it conflicted with the provisions of N.C. Const., Art. IV, § 19 requiring a judge appointed to a judicial vacancy to stand for election at the next general election; remaining portions of the statute were constitutional and could properly be severed from the unconstitutional clause. Pope v. Easley, 354 N.C. 544, 556 S.E.2d 265, 2001 N.C. LEXIS 1237 (2001).

ARTICLE V

FINANCE

Sec. 2. State and local taxation.

CASE NOTES

III. Public Purposes.
A. In General.
IV. Classification.
B. Illustrative Cases.

III. PUBLIC PURPOSES.

A. In General.

Construction with N.C. Const., Art. V, § 13. — N.C. Const., Art. V, § 2(1), providing for the exercise of the power of taxation for public purposes, does not conflict with N.C. Const., Art. V, § 13(1)(a), allowing the General Assembly to grant authority to develop airports and seaports, in such a manner that the airport and seaport facilities provision cannot be implemented as envisioned by the people of North Carolina. Piedmont Triad Airport Auth. v. Urbine, 354 N.C. 336, 554 S.E.2d 331, 2001 N.C. LEXIS 1095 (2001), cert. denied, — U.S. —, 122 S. Ct. 1438, 152 L. Ed. 2d 381 (2002).

The public purpose clause of N.C. Const., Art. V, § 2(1), regarding the exercise of taxation, acts in concert with N.C. Const., Art. V, § 13(1)(a), authorizing the General Assembly to grant authority to develop airports and seaports, and all endeavors pursuant to N.C

Const., Art. V, § 13(1)(a) can be fully realized insofar as they are for a public purpose or a public use, since N.C. Const., Art. V, § 2(1) does not act as a prohibition against developing and improving airports and seaports under N.C. Const., Art. V, § 13(1)(a), but rather, N.C. Const., Art. V, § 2(1) acts as a qualifier upon such undertakings. Piedmont Triad Airport Auth. v. Urbine, 354 N.C. 336, 554 S.E.2d 331, 2001 N.C. LEXIS 1095 (2001), cert. denied, — U.S. —, 122 S. Ct. 1438, 152 L. Ed. 2d 381 (2002).

IV. CLASSIFICATION.

B. Illustrative Cases.

Imposition of privilege tax on a live entertainment business under § 105-37.1 was unconstitutional because movie theaters had been exempted from the operation of that tax without a rational basis. Deadwood, Inc. v. N.C. Dep't of Revenue, 148 N.C. App. 122, 557 S.E.2d 596, 2001 N.C. App. LEXIS 1275 (2001).

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote.

OPINIONS OF ATTORNEY GENERAL

A person must be 21 years old by the date of the general election in order to be elected to the House of Representatives. See opinion of Attorney General to Mr. William R. Gilkeson, Jr., Staff Attorney, Research Division, Legislative Services Office, North Carolina General Assembly, 1999 N.C. AG LEXIS 33 (11/3/99).

Sec. 6. Eligibility to elective office.

OPINIONS OF ATTORNEY GENERAL

A person must be 21 years old by the date of the general election in order to be elected to the House of Representatives. See opinion of Attorney General to Mr. William R. Gilkeson, Jr., Staff Attorney, Research Division, Legislative Services Office, North Carolina General Assembly, 1999 N.C. AG LEXIS 33 (11/3/99).

Sec. 9. Dual office holding.

OPINIONS OF ATTORNEY GENERAL

Tribal Chairman. — The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and related statutes. See opinion of Attorney General to The Honorable Ronnie Sutton, N.C. House of Representatives, 2000 N.C. AG LEXIS 6 (11/17/2000).

Sec. 10. Continuation in office.

OPINIONS OF ATTORNEY GENERAL

Environmental Management Commission. — Members of the Environmental Management Commission continue to hold their positions until other appointments are made. See opinion of Attorney General to Mr. William Holman, Secretary, North Carolina Department of Environment and Natural Resources, 2000 N.C. AG LEXIS 5 (5/9/2000).

ARTICLE IX
EDUCATION

Sec. 7. County school fund.

CASE NOTES

Use of Penal Fines. —
Where a local ordinance was passed to enforce state-mandated air quality standards was a penal law, the penalties imposed for the violation of the ordinance were punitive in nature, and the payment of those penalties was payable to the school board under the mandate of N.C. Const. art. IX, § 7. Donoho v. City of Asheville, — N.C. App. —, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

Cited in Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002).

ARTICLE XIV
MISCELLANEOUS

Sec. 3. General laws defined.

CASE NOTES

Cited in Helton v. Good, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 12436 (W.D.N.C. July 5, 2002).

Sec. 5. Conservation of natural resources.

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by a law enacted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes. (1971, c. 630, s. 1; 1999-268, s. 3; 2001-217, s. 3; 2002-3 (Extra Session), s. 1.)

Editor's Note. —
Session Laws 1999-268, s. 4, as amended by Session Laws 2001-217, s. 3, and as amended by Session Laws 2002-3 (Extra Session), s. 1, provides that the amendment set out in Section 3 of the act shall be submitted to the qualified voters of the State at the statewide general election in 2002, which election shall be con-

ducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment making a technical correction to allow dedication and acceptance of property into the State Nature and Historic Preserve by the General Assembly by enactment of a bill rather than a joint resolution."

The constitutional amendment was approved by the voters at the general election on November 5, 2002, and the results were certified by the State Board of Elections on November 19, 2002.

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General Statutes of North Carolina

Sections Added, Amended or Repealed 2002 Session

This table lists the sections of the General Statutes of North Carolina which were added, amended or repealed during the 2002 legislative session of the General Assembly.

In instances where the effective date of an act has been postponed beyond January 1, 2003, the effective date of such act is indicated in the right-hand column.

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1-339.25	Amended	28	1	
1-339.64	Amended	28	2	
1-539.2C	Added	175	8	
7A-11	Amended	126	2.2	
7A-20	Amended	126	2.2	
7A-37.1	Amended	126	14.3	
7A-38.7	Added	126	29A.11	
7A-39.3	Amended	159	25	
7A-142	Repealed	159	58	
7A-273	Amended	159	1	
7A-304	Amended	126	29A.4	
7A-304	Amended	126	29A.8	
7A-304	Amended	126	29A.9	
7A-305	Amended	126	29A.4	
7A-305	Amended	126	29A.6	
7A-306	Amended	135	1	
7A-307	Amended	135	2, 3	
7A-308	Amended	126	29A.7	
7A-308	Amended	126	29A.13	
7A-308	Amended	135	4	
7A-309	Amended	126	29A.10	
7A-311	Amended	126	29A.6	
7A-311	Amended	126	29A.6	
7A-343.3	Added	126	14.12	
7A-142	Amended	159	58	
7A-451	Amended	179	16	
7A-455.1	Added	126	29A.9	
7A-498.2	Amended	126	14.7	
7A-498.6	Amended	126	14.7	
7A-498.7	Amended	126	14.11	
7A-771	Amended	126	14.7	
7A-772	Amended	126	14.7	
7B-505	Amended	164	4.7	
7B-903	Amended	164	4.8	
7B-2502	Amended	164	4.9	
7B-2503	Amended	164	4.10	
7B-3000	Amended	159	26	
8B-1	Amended	182	2	7/1/03
8B-6	Amended	182	3	7/1/03
8B-10	Amended	182	4	7/1/03
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10A-16	Amended	159	27	
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14-27.1	Amended	159	2	
14-27.3	Amended	159	2	

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14-113.8	Amended	175	2	
14-113.9	Amended	175	3	
14-113.20A	Added	175	5	
14-113.20	Amended	175	4	
14-113.22	Amended	175	6, 7	
14-119	Amended	175	1	
14-178	Amended	119	1	
14-179	Repealed	119	2	
14-208.6	Amended	147	16	
14-208.7	Amended	147	17	
14-208.8	Amended	147	18	
14-208.9	Amended	147	19	
14-208.11	Amended	147	20	
14-208.14	Amended	147	21	
14-234	Amended	159	28	
14-309.7	Amended	159	3	
14-309.11	Amended	159	4	
14-313	Amended	159	5	
14-401.18	Amended	145	4	
14-401.20	Added	183	1	
14-409.40	Amended	77	1	
14-453	Amended	157	1	
14-453.1	Added	157	2	
14-453.2	Added	157	3	
14-454.1	Added	157	4	
14-455	Amended	157	5	
14-456.1	Added	157	6	
15-144.1	Amended	159	2	
15-144.2	Amended	159	2	
15A-101.1	Added	64	1	
15A-145	Amended	126	29A.5	
15A-146	Amended	126	29A.5	
15A-301	Amended	64	3	
15A-301.1	Added	64	2	
15A-401	Amended	179	14	
15A-534.5	Added	179	15	
15A-1343	Amended	105	3	
15A-1343	Amended	126	17.18	
15A-1343	Amended	126	29A.2	
15A-1343.1	Repealed	126	17.18	
15A-1355	Amended	126	17.19	
15A-1355	Amended	159	77	
15A-1368.4	Amended	126	29A.2	
15A-1371	Amended	126	29A.1	
15A-1374	Amended	126	29A.2	
15C-1	Added	171	1	
15C-2	Added	171	1	
15C-3	Added	171	1	
15C-4	Added	171	1	
15C-5	Added	171	1	
15C-6	Added	171	1	
15C-7	Added	171	1	
15C-8	Added	171	1	
15C-9	Added	171	1	
15C-10	Added	171	1	
15C-11	Amended	159	28.5	
15C-11	Added	171	1	
15C-12	Added	171	1	

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17C-6	Amended	159	29	
18B-902	Amended	147	1	
18B-903	Amended	126	29A.13	
18B-1000	Amended	188	1	
18B-1101	Amended	102	2	
18B-1114.4	Added	102	1	
20-4	Amended	159	31.5	
20-4	Repealed	190	4	
20-4.01	Amended	72	19	
20-4.01	Amended	98	1-3	
20-9.2	Added	162	1	
20-10.1	Amended	72	6	
20-11	Amended	73	1, 2	
20-11	Amended	159	30	
20-17.4	Amended	72	7	
20-17.7	Amended	159	31.5	
20-17.7	Amended	190	3	
20-28	Amended	159	6	
20-37.20	Amended	159	31	
20-49	Amended	159	31.5	
20-49	Amended	190	5	
20-51	Amended	98	4	
20-51	Amended	150	1	
20-54	Amended	152	1	
20-63	Amended	159	31.1	
20-79.4	Amended	134	1-4	
20-79.4	Amended	159	68	
20-79.7	Amended	134	5, 6	
20-81.12	Amended	134	7	
20-87	Amended	72	8	
20-91.1	Amended	159	31.5	
20-91.1	Amended	190	3	
20-91.2	Amended	159	31.5	
20-91.2	Amended	190	3	
20-99	Amended	159	31.5	
20-99	Amended	190	6	
20-110	Amended	152	2	
20-116	Amended	72	19	
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20-118	Amended	126	26.16	
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20-135.2A	Amended	126	29A.3	
20-158.2	Added	133	2	
20-175.6	Added	98	5	
20-179.4	Amended	126	29A.1	
20-183.9	Amended	159	31.5	
20-183.9	Amended	190	7	
20-183.10	Amended	159	31.5	
20-183.10	Amended	190	8	
20-196.3	Amended	159	31.5	
20-196.3	Amended	190	9	
20-196.4	Added	126	26.17	
20-305.2	Amended	72	19	
20-354.6	Amended	159	32	
20-376	Amended	152	3	
20-377	Amended	159	31.5	
20-377	Amended	190	2	

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20-379	Amended	190	2	
20-380	Amended	159	31.5	
20-380	Amended	190	2	
20-381	Amended	152	4, 5	
20-381	Amended	159	31.5	
20-381	Amended	190	2	
20-382.2	Amended	159	31.5	
20-382.2	Amended	190	2, 3	
20-383	Amended	159	31.5	
20-383	Amended	190	2	
20-387	Amended	159	31.5	
20-387	Amended	190	10	
20-389	Amended	159	31.5	
20-389	Amended	190	2	
20-390	Amended	159	31.5	
20-390	Amended	190	2	
20-391	Amended	159	31.5	
20-391	Amended	190	11	
20-392	Amended	159	31.5	
20-392	Amended	190	12	
20-393	Amended	159	31.5	
20-393	Amended	190	2	7/1/03
20-396	Amended	159	31.5	
20-396	Amended	190	13	
20-397	Amended	159	31.5	
20-397	Amended	190	2	
25-3-118	Amended	159	7	
28A-13-3	Amended	159	8	
28A-15-1	Amended	159	9	
28A-22-9	Amended	62	1	
40A-3	Amended	172	4.1	
47-42	Amended	26	1	
47-113.1	Amended	159	61.5	7/1/03
47-113.1	Amended	162	1.1	
47-113.1	Added	96	1	
47A-17	Amended	159	10	
47C-1-102	Amended	112	1	
47F-1-102	Amended	112	2	
48-2-206	Amended	159	11	
48-2-601	Amended	159	12	
50-20	Amended	159	33	
50B-2	Amended	126	29A.6	
50B-3	Amended	105	2	
50B-3	Amended	126	29A.6	
50B-4	Amended	126	29A.6	
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51-1	Amended	159	13	
51-8	Amended	159	14	
51-16.1	Added	171	3	
53-62	Amended	29	1	
53-243.01	Amended	169	1, 2	
53-243.05	Amended	169	3-6	
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53-243.07	Amended	169	8	
53-243.08	Amended	169	9	
53-243.12	Amended	169	10	
53-243.16	Added	169	11	
53-425	Amended	159	33	

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53-426	Amended	159	33	
53-426	Added	88	1	
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55-1-22	Amended	126	29A.26	
55-7-02	Amended	58	1	
55-13-20	Amended	58	2	
55-13-22	Amended	58	3	
55A-1-22	Amended	126	29A.27	
55A-1-22	Amended	126	29A.28	
55A-10-21	Amended	27	1	
55D-21	Amended	159	23	
57C-1-22	Amended	126	29A.29	
57C-1-22	Amended	126	29A.30	
58-2-105	Amended	187	3.4	
58-2-131	Amended	144	6	
58-2-131	Amended	187	2.1	
58-2-131	Amended	187	2.2	
58-2-133	Amended	144	7	
58-2-134	Amended	187	2.3	
58-2-136	Added	144	8	
58-3-230	Amended	126	6.9	
58-5-63	Amended	185	8	
58-6-25	Amended	72	9	
58-6-25	Amended	126	15.5	
58-6-25	Amended	144	1	
58-6-25	Amended	159	66.5	
58-7-73	Added	187	2.4	
58-7-130	Amended	187	2.5	
58-7-178	Amended	187	2.6	
58-9-2	Amended	187	2.7	
58-13-10	Amended	187	2.8	
58-13-25	Amended	187	2.9	
58-26-1	Amended	187	7.1	
58-26-1	Amended	187	7.2	
58-26-20	Amended	187	7.3	
58-26-25	Amended	187	7.4	
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58-26-25	Amended	187	7.6	
58-26-30	Repealed	187	7.7	
58-26-31	Added	187	7.8	
58-26-35	Amended	187	7.9	
58-26-40	Repealed	187	7.10	
58-30-62	Amended	187	2.10	
58-33-130	Amended	144	3	
58-33-133	Added	144	2	
58-35-85	Amended	187	6	
58-36-15	Amended	187	4.1	
58-36-20	Amended	187	4.2	
58-36-65	Amended	187	4.3	
58-37-1	Amended	187	1.1	
58-37-35	Amended	185	6	
58-37-35	Amended	187	1.2	
58-37-35	Amended	187	1.3	
58-45-6	Amended	187	1.4	
58-45-30	Amended	185	2	5/1/03
58-45-35	Amended	185	4.1	
58-45-36	Added	185	4.2	

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58-45-90	Added	185	7.1	
58-46-2	Amended	187	1.5	
58-46-41	Added	185	5.2	
58-46-60	Added	185	7.2	
58-50-80	Amended	187	3.1	
58-50-80	Amended	187	3.2	
58-50-89	Amended	187	3.3	
58-51-15	Amended	187	5.2	
58-58-60	Amended	187	8	
58-68-25	Amended	187	5.1	
58-86-55	Amended	113	1	
58-86-55	Amended	126	28.7	
58-86-91	Added	126	6.4	
58-89-1	Added	168	8	
58-89-5	Added	168	8	
58-89-10	Added	168	8	
58-89-15	Added	168	8	
58-89-20	Added	168	8	
58-89-25	Added	168	8	
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59-35.1	Amended	58	4	
59-73.12	Amended	159	34	
59-73.33	Amended	159	17	
59-84.2	Amended	58	5	
59-1052	Amended	159	34	
59-1106	Amended	126	29A.31	
62-110	Amended	14	1	
62-133.6	Added	4	9	
62A-21	Amended	16	15	
66-58	Amended	102	3	
66-58	Amended	109	1	
66-58	Amended	126	9.15	
66-58	Amended	126	18.5	
66-165	Amended	147	2	
66-290	Amended	145	1, 2	
66-290	Added	145	2	
66-291	Amended	145	2	
66-292	Added	145	3	
66-293	Added	145	3	
66-294	Added	145	3	
66-294.1	Added	145	3	
69-25.1	Amended	159	55	
70-28	Amended	159	35	
70-48	Amended	159	35	
70-49	Amended	159	35	
74-49	Amended	165	2.1	
74-50	Amended	159	35	
74C-8	Amended	147	3	
74D-2	Amended	147	4	
77-90	Added	177	1	
77-91	Added	177	1	
77-92	Added	177	1	
77-93	Added	177	1	
77-94	Added	177	1	
77-95	Added	177	1	
77-96	Added	177	1	
77-97	Added	177	1	
77-98	Added	177	1	

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77-103	Added	177	1	
77-104	Added	177	1	
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78A-17	Amended	126	29A.22	
78A-17	Amended	126	29A.23	
78A-31	Amended	126	29A.24	
78A-31	Amended	126	29A.37	
78A-31	Amended	189	4	
78A-37	Amended	126	29A.34	
78C-17	Amended	126	29A.35	
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78C-20	Amended	159	16	
80-3	Amended	126	29A.36	
84-24	Amended	147	5	
87-21	Amended	159	36	3/1/03
87-98.2	Amended	165	1.1	
89A-3.1	Amended	168	7	
90-11	Amended	147	6	
90-12.2	Added	179	20	
90-21.22A	Amended	179	18	
90-29	Amended	37	8	
90-29.4	Amended	37	10	
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90-37.1	Added	37	4	
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90-41	Amended	37	9	
90-85.3	Amended	159	37	
90-85.15	Amended	147	8	
90-95.3	Amended	126	29A.8	
90-96	Amended	126	29A.5	
90-143.2	Amended	59	1	
90-210.25	Amended	147	9	
90-224	Amended	147	10	
90-224.1	Added	37	3	
90-232	Amended	37	6	
90D-1	Added	182	1	7/1/03
90D-2	Added	182	1	7/1/03
90D-3	Added	182	1	7/1/03
90D-4	Added	182	1	7/1/03
90D-5	Added	182	1	
90D-6	Added	182	1	
90D-7	Added	182	1	7/1/03
90D-8	Added	182	1	7/1/03
90D-9	Added	182	1	7/1/03
90D-10	Added	182	1	7/1/03
90D-11	Added	182	1	7/1/03
90D-12	Added	182	1	7/1/03
90D-13	Added	182	1	7/1/03
93A-3	Amended	168	3	
93A-4	Amended	147	11	
93A-4	Amended	168	4	
93A-6	Amended	168	5	
93B-16	Added	168	1	
95-25.14	Amended	113	2	
95-47.2	Amended	147	12	

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96-12.01	Amended	143	1	
104E-8	Amended	70	2	
104E-9	Amended	70	3	
105-32.2	Amended	87	9	
105-32.2	Amended	126	30C.3	
105-41	Amended	158	3	7/1/03
105-113.82	Amended	120	1	
105-114	Amended	126	30G.2	
105-114.1	Added	126	30G.2	
105-116	Amended	72	10	
105-116	Amended	120	8	
105-116.1	Amended	120	2	
105-127	Amended	72	11	
105-129.2A	Amended	146	2	
105-129.2	Amended	172	1.5	
105-129.3A	Amended	172	1.4	
105-129.4	Amended	72	12	
105-129.4	Amended	146	3, 4	
105-129.4	Amended	172	1.2	
105-129.4	Amended	172	1.3	
105-129.5	Amended	146	5	
105-129.8	Amended	146	6	
105-129.9	Amended	146	7	
105-129.9	Amended	172	1.1	
105-129.12A	Amended	72	13	
105-129.15A	Amended	87	4	
105-129.15	Amended	87	3	
105-129.16B	Amended	87	2	
105-129.16B	Amended	126	30H	
105-129.17	Amended	87	5	
105-129.19	Amended	87	6	
105-129.36	Amended	159	35	
105-129.40	Added	87	1	
105-129.41	Added	87	1	
105-129.41	Amended	87	2	
105-129.42	Added	87	1	
105-129.43	Added	87	1	
105-129.44	Added	87	1	
105-129.45	Added	87	1	
105-130.4	Amended	126	30G.1	
105-130.5	Amended	72	14	
105-130.5	Amended	126	30C.2	
105-130.5	Amended	136	1	
105-130.5	Amended	136	4	
105-130.6A	Added	136	2	
105-130.8	Amended	136	3	
105-130.34	Amended	72	15	
105-130.41	Amended	99	6	
105-134.6	Amended	126	30B.1	
105-134.6	Amended	126	30C.2	
105-134.6	Amended	126	30C.4	
105-151.12	Amended	72	15	
105-151.22	Amended	99	6	
105-151.24	Amended	126	30B.2	
105-159.1	Amended	106	3	
105-159.2	Added	158	4	
105-163.7	Amended	72	16	
105-163.010	Amended	99	3	

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105-163.015	Added	99	5	
105-164.3	Amended	16	1-3	
105-164.3	Amended	146	1	
105-164.3	Amended	170	6	
105-164.4B	Amended	16	5	
105-164.4C	Amended	16	6-9	
105-164.4C	Amended	16	10	1/1/04
105-164.4C	Amended	16	11	
105-164.4C	Amended	16	14	1/1/04
105-164.4	Amended	16	4	
105-164.13	Amended	184	9	7/1/03
105-164.16	Amended	184	10	
105-164.16	Amended	184	11	
105-164.23	Amended	72	17	
105-164.27A	Amended	72	18	
105-164.28A	Added	184	12	
105-164.44C	Repealed	126	30A.1	
105-164.44F	Amended	120	4	
105-187.1	Amended	72	19	
105-187.44	Amended	120	3	
105-188	Amended	126	30C.5	
105-228.90	Amended	106	1	
105-228.90	Amended	126	30C.1	
105-236	Amended	106	2	
105-236	Amended	106	4	
105-243.1	Amended	126	22.2	
105-256	Amended	87	8	
105-256	Amended	126	22.5	
105-259	Amended	87	7	
105-259	Amended	106	5	
105-259	Amended	172	2.3	
105-269.3	Amended	159	31.5	
105-269.3	Amended	190	2	
105-269.6	Repealed	158	6	
105-269.14	Amended	72	20	
105-273	Amended	156	4	
105-275	Amended	104	1	
105-275.1	Repealed	126	30A.1	
105-275.2	Repealed	126	30A.1	
105-277.1A	Repealed	126	30A.1	
105-277.001	Repealed	126	30A.1	
105-277.2	Amended	184	1	7/1/03
105-277.3	Amended	184	2	7/1/03
105-277.4	Amended	184	3	7/1/03
105-277.7	Amended	184	4	7/1/03
105-289	Amended	184	5	7/1/03
105-296	Amended	184	6	7/1/03
105-299	Amended	184	7	7/1/03
105-317.1	Amended	156	2	7/1/03
105-322	Amended	156	3	7/1/03
105-357	Amended	156	1	
105-358	Amended	156	1	
105-449.41	Repealed	108	2	
105-449.47	Amended	108	3	
105-449.52	Amended	108	4	
105-449.60	Amended	108	5, 6	
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105-449.88	Amended	108	11	
105-449.101	Amended	108	12	
105-449.106	Amended	108	13	
105-449.114	Amended	108	14	
105-449.115A	Added	108	16	
105-449.115	Amended	108	15	
105-449.118	Amended	108	17	
105-463	Amended	123	7	
105-467	Amended	16	12	
105-467	Amended	159	61	
105-480	Amended	123	8	
105-495	Amended	123	9	
105-501	Amended	126	30D	
105-517	Amended	123	1	
105-518	Amended	123	2	
105A-2	Amended	156	5	
105A-5	Amended	156	5	
105A-13	Amended	156	5	
106-24.1	Amended	179	8	
106-65.26	Amended	147	13	
106-307.2	Amended	179	9	
108A-27.11	Amended	126	10.37	
108A-70.5	Amended	126	10.11	
108A-70.21	Amended	126	10.20	
110-108	Repealed	126	10.58	
113-28.2A	Added	111	1	
113-60.23	Amended	132	1	
113-145.6A	Amended	148	3	
113-229	Amended	126	29.2	
113-229	Amended	126	29.2	
113A-54	Amended	165	2.2	
113A-54	Amended	165	2.3	
113A-54.2	Amended	165	2.4	
113A-56	Amended	165	2.5	
113A-57	Amended	165	2.6	
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113A-61	Amended	165	2.9	
113A-61.1	Amended	165	2.10	
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113A-118.1	Amended	126	29.2	
113A-120.1	Amended	68	1	
113A-125	Amended	165	2.16	
113A-231	Amended	155	1	
113A-232	Amended	155	2	
113A-233	Amended	155	3	
113A-234	Amended	155	4	
113A-235	Amended	155	5	
113-28.2A	Added	111	1	
113-60.23	Amended	132	1	
113-145.6A	Amended	148	3	
113-229	Amended	126	29.2	
113-229	Amended	126	29.2	
114-4.2G	Repealed	168	6	

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115C-12	Amended	103	1	
115C-12	Amended	126	7.15	
115C-12	Amended	159	63	
115C-12	Amended	178	1	
115C-47	Amended	103	2	
115C-47	Amended	178	3	
115C-105.38	Amended	178	7	
115C-110	Amended	182	6	7/1/03
115C-102.15	Added	126	7.27	
115C-140.1	Amended	164	2	7/1/03
115C-174.12	Amended	126	7.30	
115C-174.12	Amended	159	70	
115C-296	Amended	126	7.39	
115C-296.1	Amended	126	7.24	
115C-302.1	Amended	126	7.11	
115C-302.1	Amended	159	37.5	
115C-302.2	Added	174	1	
115C-315	Amended	126	7.41	
115C-316	Amended	126	28.10	
115C-319	Amended	126	7.36	
115C-320	Amended	171	4	
115C-325	Amended	110	2, 3	
115C-325	Amended	126	7.38	
115C-325	Amended	126	28.10	
115C-336.1	Added	159	37.5	
115C-363.23A	Amended	126	9.2	
115C-366	Amended	171	5	
115C-402	Amended	171	6	
115C-472.1	Added	126	9.2	
116-13.2	Amended	126	9.16	
116-19	Amended	69	1	
116-21.4	Amended	126	9.6	
116-22	Amended	126	9.11	
116-22	Amended	159	38	
116-204	Amended	126	9.2	
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116-235	Amended	126	9.12	
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119-65	Added	108	1	
120-2	Amended	1	1, 2	
120-1	Amended	1	3.1	
120-2	Amended	2	1	
120-3	Amended	159	39	
120-4.16	Amended	71	1	
120-4.22A	Amended	126	28.8	
120-4.31	Amended	71	2	
120-4.32	Added	126	6.4	
120-37	Amended	159	35	
120-47.3	Amended	126	29A.33	
120-70.33	Amended	70	4	
120-70.42	Amended	176	4	
120-70.60	Amended	165	1.3	
120-70.108	Added	184	8	
120-93	Amended	159	55	
120-98	Amended	159	55	

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120-123	Amended	133	5	
120-123	Amended	172	2.5	
120-150	Amended	165	1.4	
120-258	Added	126	29.3	
120-259	Added	126	29.3	
120-260	Added	126	29.3	
121-7	Amended	159	35	
121-8	Amended	159	35	
122C-10	Amended	126	10.30	
122C-11	Amended	126	10.30	
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122C-111	Amended	164	4.2	
122C-115.2	Amended	164	4.3	
122C-118.1	Amended	159	40	
122C-143.2	Amended	159	40	
126-5	Amended	126	28.4	
126-5	Amended	133	4	
127A-40	Amended	126	6.4	
128-24	Amended	126	28.13	
128-26	Amended	71	3	
128-26	Amended	153	1-3	
128-27	Amended	126	28.8	
128-27	Amended	126	28.9	
128-38.2	Amended	71	4	
128-38.3	Amended	126	6.4	
130A-2	Amended	179	4	
130A-20	Amended	179	6	
130A-22	Amended	154	1	
130A-29	Amended	179	2	
130A-48	Amended	159	55	
130A-93.1	Amended	126	29A.18	
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130A-133	Repealed	179	3	
130A-143	Amended	179	7	
130A-145	Amended	179	5	
130A-149	Repealed	179	2	
130A-152	Amended	179	10	
130A-157	Amended	179	17	
130A-248	Amended	126	29A.15	
130A-248	Amended	126	29A.16	
130A-294	Amended	148	4	
130A-309.63	Amended	126	12.5	
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130A-367	Added	37	1	
130A-475	Added	179	1	
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130A-478	Added	179	1	
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131E-95	Amended	179	19	
131E-184	Amended	159	41	
132-1.1	Amended	171	7	
132-6.1	Amended	159	35	
133-3	Amended	107	5	
133-3	Amended	159	64	
133-4.1	Amended	161	11.1	
135-1	Amended	110	1	
135-1	Amended	126	28.6	
135-1	Amended	126	28.12	
135-1	Amended	174	2	
135-3	Amended	126	28.10	
135-3	Amended	126	28.13	
135-4	Amended	71	5	
135-4	Amended	153	4	
135-4	Amended	174	3	
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135-39	Amended	126	28.16	
135-40.2	Amended	174	4	
135-40.6	Amended	126	28.17	
135-56.3	Added	71	7	
135-65	Amended	126	28.8	
135-74	Amended	71	8	
135-75	Added	126	6.4	
136-18.5A	Added	86	2	
136-18.5B	Added	170	4	
136-27.2	Added	126	26.18	
136-28.1	Amended	151	1	
136-28.6	Amended	170	1	
136-28.7	Amended	151	3	
136-28.11	Amended	151	2	
136-41.1	Amended	120	5	
136-44.7	Amended	86	1	
136-89.180	Added	133	1	
136-89.181	Added	133	1	
136-89.182	Added	133	1	
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136-89.191	Added	133	1	
136-89.192	Added	133	1	
136-89.193	Added	133	1	
136-89.194	Added	133	1	
136-89.195	Added	133	1	
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136-89.197	Added	133	1	
136-131.1	Amended	11	1	
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136-176	Amended	126	26.9	
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136-211	Amended	170	2	
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139-54	Amended	176	3	
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142-61	Added	161	9	
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143-48.3	Amended	126	27.1	
143-53	Amended	107	2	
143-59.1	Amended	189	6	
143-59.2	Added	189	5	
143-64.17A	Amended	161	3	
143-64.17B	Amended	161	4	
143-64.17C	Repealed	161	5	
143-64.17D	Amended	161	6	
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143-128	Amended	159	42	
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143-129.9	Amended	159	64	
143-129.9	Added	107	1	
143-138	Amended	144	5	
143-143.10	Amended	144	4	
143-166.41	Amended	126	28.14	
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143-215.74	Amended	165	2.18	
143-215.94M	Amended	148	7	
143-215.94W	Amended	90	6	
143-215.94Y	Amended	90	7	
143-215.104S	Amended	165	1.5	
143-215.107D	Added	4	1	
143-215.107	Amended	4	3	
143-215.107	Amended	165	1.7	
143-215.108	Amended	4	2	
143-215.114A	Amended	4	4, 5	
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143-215.114B	Amended	4	6-8	
143-258	Repealed	165	1.8	

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143-508	Amended	179	13	
143-518	Amended	179	11	
143-640	Amended	159	20	
143-730	Amended	159	45	
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143A-48.1	Added	126	10.10D	
143B-49	Amended	180	3.2	
143B-62	Amended	159	35	
143B-127	Amended	159	35	
143B-132	Amended	159	35	
143B-138.1	Amended	126	10.10D	
143B-139.1	Amended	164	4.5	
143B-148	Amended	61	1	
143B-168.12	Amended	126	10.55	
143B-168.13	Amended	126	10.55	
143B-216.20	Repealed	126	10.10D	
143B-216.21	Repealed	126	10.10D	
143B-216.22	Repealed	126	10.10D	
143B-216.23	Repealed	126	10.10D	
143B-216.33	Amended	182	5	7/1/03
143B-216.60	Added	126	10.45	
143B-262.1	Amended	126	17.7	
143B-262.4	Amended	126	29A.1	
143B-262.5	Added	126	17.5	
143B-279.3	Amended	70	1	
143B-279.9	Amended	90	1	
143B-279.10	Amended	90	2	
143B-279.11	Amended	90	3-5	
143B-282	Amended	165	1.9	
143B-289.44	Amended	159	46	
143B-290	Amended	165	1.10	
143B-295	Amended	176	2	
143B-301.12	Amended	165	1.11	
143B-344.32	Amended	176	6	
143B-394.16	Amended	105	1	
143B-407	Amended	126	19.1A	
143B-426.41	Added	126	28.6	
143B-434.3	Amended	172	3.1	
143B-437.01	Amended	172	2.2	
143B-437.06	Added	126	8.3	
143B-437.50	Added	172	2.1	
143B-437.51	Added	172	2.1	
143B-437.52	Added	172	2.1	
143B-437.53	Added	172	2.1	
143B-437.54	Added	172	2.1	
143B-437.55	Added	172	2.1	
143B-437.56	Added	172	2.1	
143B-437.57	Added	172	2.1	
143B-437.58	Added	172	2.1	
143B-437.59	Added	172	2.1	
143B-437.60	Added	172	2.1	
143B-437.61	Added	172	2.1	
143B-437.62	Added	172	2.1	
143B-454	Amended	99	7	

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143B-454	Amended	126	6.6	
143B-469	Repealed	126	6.6	
143B-469.1	Repealed	126	6.6	
143B-469.2	Repealed	126	6.6	
143B-469.3	Repealed	126	6.6	
143B-472.85	Added	181	1	
143B-472.86	Added	181	1	
143B-472.87	Added	181	1	
143B-472.88	Added	181	1	
143B-472.89	Added	181	1	
143B-472.90	Added	181	1	
143B-472.91	Added	181	1	
143B-472.92	Added	181	1	
143B-472.93	Added	181	1	
143B-472.94	Added	181	1	
143B-472.95	Added	181	1	
143B-472.96	Added	181	1	
143B-472.97	Added	181	1	
143B-475	Amended	159	31.5	
143B-475	Amended	190	14	
143B-476	Amended	159	31.5	
143B-476	Amended	190	15	
143B-480.2	Amended	126	18.6	
143B-480.2	Amended	159	47	
143B-480.2	Amended	159	78	
143B-499.1	Amended	126	18.7	
143B-499.2	Amended	126	18.7	
143B-499.7	Added	126	18.7	
143B-520	Amended	126	16.2	
147-33.82	Amended	126	27.2	
147-33.95	Amended	107	4	
147-33.95	Amended	159	64	
147-37	Amended	126	29A.32	
147-64.6	Amended	126	27.2	
147-64.6	Amended	159	48	
147-69.3	Amended	126	6.12	
148-10.3	Added	126	17.10	
148-65.1	Repealed	166	2	10/23/03
148-65.1A	Repealed	166	2	10/23/03
148-65.3	Repealed	166	2	10/23/03
148-65.4	Added	166	1	
148-65.5	Added	166	1	
148-65.6	Added	166	1	
148-65.7	Added	166	1	
148-65.8	Added	166	1	
148-65.9	Added	166	1	
148-122	Added	166	4	
150B-1	Amended	99	7	
150B-1	Amended	159	31.5	
150B-1	Amended	159	49	
150B-1	Amended	172	2.6	
150B-1	Amended	190	16	
150B-21.1	Amended	97	2, 3	
150B-21.1	Amended	164	4.6	
150B-21.3	Amended	97	5	
150B-21.19	Amended	97	4	
150B-21.24	Amended	97	1	
153A-140	Amended	116	2	
153A-149	Amended	159	50	

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153A-149	Amended	172	2.4	
153A-155	Amended	138	5	2/1/03
153A-250	Amended	159	51	
153A-279	Added	78	2	
153A-335	Amended	141	8	
153A-357	Amended	165	2.19	
159-13	Amended	126	6.7	
159-15	Amended	126	30A.2	
159-81	Amended	133	6, 7	
159-96	Amended	133	8	
159B-27	Amended	120	6	
159D-7	Amended	172	5.2	
159D-8	Amended	172	5.3	
159G-3	Amended	176	5	
159G-6	Amended	176	7	
159I-1	Amended	72	21	
160A-20	Amended	161	10	
160A-23.1	Amended	159	52	
160A-58.1	Amended	121	1	
160A-176.2	Amended	141	1	
160A-193	Amended	116	3	
160A-209	Amended	159	50	
160A-209	Amended	172	2.4	
160A-215	Amended	94	4	
160A-215	Amended	95	3	
160A-215	Amended	138	2	2/1/03
160A-215	Amended	139	2	
160A-215	Amended	159	62	
160A-304	Amended	147	14	
160A-326	Added	78	3	
160A-400.6	Amended	159	35	
160A-417	Amended	165	2.20	
160A-443	Amended	118	3	
160A-626	Added	78	1	
161-14	Amended	159	53	
161-31	Amended	51	1	
162A-3	Amended	76	1	
162A-3.1	Amended	76	2	
162-39	Amended	126	17.1	
162-58	Amended	159	54	
163-82.10	Amended	171	8	
163-98	Amended	159	55	
163-106	Amended	158	8, 9	1/1/04
163-106	Amended	159	55	
163-107	Amended	158	10	1/1/04
163-107.1	Amended	158	11	1/1/04
163-109	Repealed	159	55	
163-111	Amended	158	12	1/1/04
163-119	Amended	159	21	
163-122	Amended	159	21	
163-123	Amended	158	13	1/1/04
163-132.3	Amended	159	56	
163-165	Amended	159	21	
163-165.1	Amended	159	55	
163-165.6	Amended	158	14	
163-213.5	Amended	159	55	
163-227.3	Amended	159	55	
163-230.1	Amended	159	55	
163-230.2	Added	159	57	

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163-276	Amended	159	21	
163-278.6	Amended	159	55	
163-278.7	Amended	159	57.1	
163-278.9A	Amended	159	21	
163-278.9	Amended	159	21	
163-278.13	Amended	158	2	
163-278.14	Amended	159	55	
163-278.19	Amended	159	57.3	
163-278.22	Amended	159	35	
163-278.30	Amended	159	55	
163-278.33	Amended	159	21	
163-278.46	Repealed	158	5	
163-278.47	Repealed	158	5	
163-278.48	Repealed	158	5	
163-278.49	Repealed	158	5	
163-278.50	Repealed	158	5	
163-278.51	Repealed	158	5	
163-278.52	Repealed	158	5	
163-278.53	Repealed	158	5	
163-278.54	Repealed	158	5	
163-278.55	Repealed	158	5	
163-278.56	Repealed	158	5	
163-278.57	Repealed	158	5	
163-278.61	Added	158	1	
163-278.62	Added	158	1	
163-278.63	Added	158	1	
163-278.64	Added	158	1	
163-278.65	Added	158	1	
163-278.66	Added	158	1	
163-278.67	Added	158	1	
163-278.68	Added	158	1	
163-278.69	Added	158	1	
163-278.70	Added	158	1	
163-321	Amended	158	7	1/1/04
163-323	Amended	158	7	1/1/04
163-323	Amended	159	21	
163-325	Amended	158	7	1/1/04
163-326	Amended	158	7	1/1/04
163-327	Amended	158	7	1/1/04
163-329	Amended	158	7	1/1/04
163-332	Amended	158	7	1/1/04
165-20	Amended	126	19.3	
165-21	Amended	126	19.3	
165-22	Amended	126	19.3	
165-22.1	Amended	126	19.3	
166A-5	Amended	179	12	
166A-6.01	Amended	24	1	
166A-6.01	Amended	159	57.5	
166A-6.1	Amended	70	5	
166A-14	Amended	179	20	
166A-20	Amended	179	21	
166A-21	Amended	179	21	
166A-22	Amended	179	21	
166A-23	Amended	179	21	
166A-24	Amended	179	21	
166A-25	Amended	179	21	
166A-26	Amended	179	21	
168A-2	Amended	163	1	
168A-3	Amended	163	2	

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168A-7	Amended	163	3	
168A-10.1	Added	163	4	
168-21	Amended	159	24	