

THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1989 CUMULATIVE SUPPLEMENT

Volume 2D

Chapters 98 through 105B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

A. D. KOWALSKY, S. C. WILLARD, K. S. MAWYER,
S. C. GORMAN, AND T. R. TROXELL

Annotated through 379 S.E.2d 161. For complete scope of
annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Volume 2D contains the general laws of a permanent nature enacted by the General Assembly through the 1989 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

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

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

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. 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 1A, Part I for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1989 Regular Session affecting Chapters 98 through 105B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 324, p. 436.

North Carolina Court of Appeals Reports through Volume 92, p. 757.

South Eastern Reporter 2nd Series through Volume 379, p. 161.

Federal Reporter 2nd Series through Volume 873, p. 1452.

Federal Supplement through Volume 710, p. 802.

Federal Rules Decisions through Volume 124, p. 691.

Bankruptcy Reports through Volume 98, p. 605.

Supreme Court Reporter through Volume 109, p. 2114.

North Carolina Law Review through Volume 67, p. 740.

Wake Forest Law Review through Volume 24, p. 538.

Campbell Law Review through Volume 11, p. 310.

Duke Law Journal through 1988, p. 1271.

North Carolina Central Law Journal through Volume 17, p. 228.

Opinions of the Attorney General.

The General Statutes of North Carolina 1989 Cumulative Supplement

VOLUME 2D

Chapter 99B.

Editor's Note. — The legislation and annotations affecting Chapter 99B have been included in a recently published replacement chapter.

Chapter 100.

Monuments, Memorials and Parks.

Article 1.

Approval of Memorials, Works of Art, etc.

Sec.

100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

Article 3.

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100-12. Roads, trails, and fences authorized; protection of property.

100-13. Fees for use of improvements; fees for other privileges; leases; rules.

100-14. Use of fees and other collections.

100-15. Annual reports.

ARTICLE 1.

Approval of Memorials, Works of Art, etc.

§ 100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

No memorial or work of art shall hereafter become the property of the State by purchase, gift or otherwise, unless such memorial or work of art or a design of the same, together with the proposed location of the same, shall first have been submitted to and approved by the North Carolina Historical Commission; nor shall any memorial or work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the State. No existing memorial or work of art owned by the State shall be removed, relocated, or altered in any way without approval of the North Carolina Historical Commission. The term "work of art" as used in this section shall include any painting, portrait, mural decoration, stained glass, statute, bas-relief, sculpture, monument, tablet, fountain, or other article or structure of a permanent character intended for decoration or commemoration. This section, however, shall not apply to markers set up by the Board of Transportation in cooperation with the Department of Environment, Health, and Natural Resources and the Department of Cultural Resources as provided by Chapter 197 of the Public Laws of 1935. (1941, c. 341, s. 2; 1957, c. 65, s. 11; 1973, c. 476, s. 48; c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1306, ss. 3, 4; 1989, c. 727, s. 218(27).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and

Natural Resources" for "Natural Resources and Community Development" in the last sentence.

ARTICLE 3.

*Mount Mitchell Park.***§ 100-11. Duties.**

The Department of Environment, Health, and Natural Resources shall have complete control, care, protection and charge of that part of Mitchell's Park acquired by State. (1915, c. 76; 1919, c. 316, s. 3; C.S., s. 6940; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(28).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development".

§ 100-12. Road, trails, and fences authorized; protection of property.

The Department of Environment, Health, and Natural Resources is authorized and empowered to enter upon the land hereinbefore referred to, and to build a fence or fences around the same, also roads, paths, and trails and protect the property against trespass and fire and injury of any and all kinds whatsoever; cut wood and timber upon the same, but only for the purpose of protecting the other timber thereon and improving the property generally. (1919, c. 316, s. 5; C.S., s. 6942; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(29).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development".

§ 100-13. Fees for use of improvements; fees for other privileges; leases; rules.

The Department of Environment, Health, and Natural Resources is further authorized to charge and collect fees for the use of such improvements as have already been constructed, or may hereafter be constructed, on the park, and for other privileges connected with the full use of the park by the public; to lease sites for camps, houses, hotels, and places of amusement and business; and to make and enforce such necessary rules as may best tend to protect, preserve and increase the value and attractiveness of the park. (1921, c. 222, s. 2; C.S., s. 6942(a); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 25.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "rules" for "rules and regulations" in the catchline; near the beginning of the section, substituted "Department of Environment, Health, and Natural Resources" for "Department of Natural Resources and Community Development" and deleted "and empowered" following "is further authorized"; and deleted "and regulations" following "necessary rules" near the end of the section.

§ 100-14. Use of fees and other collections.

All fees and other money collected and received by the Department of Environment, Health, and Natural Resources in connection with its proper administration of the North Carolina State Parks System shall be used by said Department for the administration, protection, improvement, and maintenance of the State Parks System. (1921, c. 22, s. 3; C.S., s. 6942(b); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 26.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Environment, Health, and Natural Resources" for "Department of Natural Resources and Community Development" and "the

North Carolina State Parks System" for "Mount Mitchell State Park", deleted "of Natural Resources and Community Development" following "by said Department", and substituted "the State Parks System" for "said park".

§ 100-15. Annual reports.

The Department shall make an annual report to the Governor of all money received and expended by it in the administration of the North Carolina State Parks System, and of such other items as may be called for by him or by the General Assembly. (1921, c. 222, s. 4; C.S., s. 6942(c); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 27.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, deleted "of Natural Resources and Community Development" following "The

Department", and substituted "the North Carolina State Parks System" for "Mount Mitchell State Park".

Chapter 101.

Names of Persons.

§ 101-1. Legislature may regulate change by general but not private law.

OPINIONS OF ATTORNEY GENERAL

The Division of Motor Vehicles is the authority to establish a policy to require documented proof from the Register of Deeds or official court documents for a name change on driver licenses and

identification cards as the only method of establishing a name change. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, 58 N.C.A.G. 4 (1988).

§ 101-5. Clerk to order change; certificate and record.

OPINIONS OF ATTORNEY GENERAL

Policy to Require Proof of Name Change Not Authorized. — The Division of Motor Vehicles does not have the authority to establish a policy to require documented proof from the Register of Deeds or official court documents for a

name change on driver licenses and identification cards as the only method of establishing a name change. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, — N.C.A.G. — (Jan. 5, 1988).

Chapter 102.

Official Survey Base.

Sec.	Sec.
102-1.1. Name and description in relation to 1983 North American Datum.	102-10. Prior work.
102-8. Administrative agency.	102-15. Improvement of land records.
	102-17. County projects eligible for assistance.

§ 102-1.1. Name and description in relation to 1983 North American Datum.

From and after the date and time the North Carolina Geodetic Survey Section in the Land Resources Division of the Department of Environment, Health, and Natural Resources receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of $79^{\circ} - 00'$ west from Greenwich and standard parallels of latitude of $34^{\circ} - 20'$ and $36^{\circ} - 10'$ north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian $79^{\circ} - 00'$ west from Greenwich at the intersection of the parallels $33^{\circ} - 45'$ north latitude, such origin being given the coordinates $x = 609,601.22$ metres, $y = 0$ metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927. (1979, c. 4; 1987, c. 148; 1989, c. 727, s. 218(33).)

Effect of Amendments. — The 1987 amendment, effective May 7, 1987, substituted "Geodetic Reference System (GRS 80 Ellipsoid)" for "World Reference Ellipsoid" in the first sentence, inserted the present third sentence, substituted "609,601.22" for "600,000" in the present fourth sentence, and added the final sentence.

The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" near the beginning of the first sentence.

§ 102-8. Administrative agency.

The administrative agency of the North Carolina Coordinate System shall be the Department of Environment, Health, and Natural Resources through its appropriate division hereinafter called the "agency." (1939, c. 163, s. 8; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(34).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Nat-

ural Resources" for "Natural Resources and Community Development".

§ 102-10. Prior work.

The system of stations, monuments, traverses, computations, and other work which has been done or is under way in North Carolina by the so-called North Carolina Geodetic Survey, under the supervision of the United States Coast and Geodetic Survey, is, where consistent with the provisions of this Chapter, hereby made a part of the North Carolina Coordinate System. The surveys, notes, computations, monuments, stations, and all other work relating to the coordinate system, which has been done by said North Carolina Geodetic Survey, under the supervision of and in cooperation with the United States Coast and Geodetic Survey and federal relief agencies, hereby are placed under the direction of, and shall become the property of, the administrative agency. All persons or agencies having in their possession any surveys, notes, computations, or other data pertaining to the aforementioned coordinate system, shall turn over to the Department of Environment, Health, and Natural Resources such data upon request. (1939, c. 163, s. 10; 1959, c. 1315, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(35).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and

Natural Resources" for "Natural Resources and Community Development" in the last sentence.

§ 102-15. Improvement of land records.

There is hereby established a statewide program for improvement of county land records to be administered by the Secretary of the Department of Environment, Health, and Natural Resources (hereafter called the Secretary). First emphasis shall be given to the completion of countywide base maps. Counties with a base map system prepared to acceptable standards will be encouraged to undertake subsequent logical improvements in their respective land records systems. Work undertaken by any county under this program will be eligible for financial assistance out of funds appropriated for this purpose to the Department of Environment, Health, and Natural Resources. The amount allotted to each project is to be determined by the Secretary, but in no case shall such allotments exceed one dollar for every dollar of local tax funds expended on the project by the county. Federal or other State funds available to the project will not be eligible as matching money under the State program. (1977, c. 1099, s. 1; 1985, c. 479, s. 165(b); 1989, c. 727, s. 218(36).)

Effect of Amendments.

The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for

"Natural Resources and Community Development" in the first and fourth sentences.

§ 102-17. County projects eligible for assistance.

All projects funded under this assistance program shall be described as conforming to one or more of the project outlines defined herein. All projects shall achieve a substantial measure of conformity with the objectives set forth in these project outlines such that a greater degree of statewide standardization of land records will result. The Secretary shall prepare and make available to all counties administrative regulations designed to assist the counties in preparing project plans and applications for assistance, and to assure compliance with the objectives and other requirements of G.S. 102-15, 102-16, and this section. County projects shall be eligible for assistance subject to availability of funds, compliance with administrative regulations, and conformity with one or more of the project outlines as follows:

- (1) **Base Maps.** — Preparation of accurate planimetric or orthophoto maps with countywide coverage at one or more scale ratios suitable as a base for the development and maintenance of current cadastral maps. These maps shall have additional information included where appropriate to increase their utility for other purposes. The formulation of technical standards and detailed specifications and the coordination of all such mapping projects with other State mapping programs shall be the responsibility of the Department of Environment, Health, and Natural Resources. Insofar as possible mapping projects funded under this assistance program shall utilize existing photography, geodetic control surveys, and previously mapped information, and be coordinated or combined with adjacent or related mapping projects to achieve the best efficiency and economy consistent with the maintenance of high quality map production.
- (4) **Automated Processing of Land Parcel Records.** — Preparation and implementation of a system of automated record keeping and processing which will expedite the maintenance of accurate up-to-date files, improve the appraisal process, and facilitate analytical operations needed to respond to requirements for current information. Technical standards and minimum specifications shall be the joint responsibility of the Department of Environment, Health, and Natural Resources, the Department of Revenue, and the Department of Cultural Resources. (1977, c. 771, s. 4; c. 1099, s. 1; 1985, c. 479, s. 165(c); 1989, c. 727, s. 218(37).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1989 amendment, effective July

1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in subdivisions (1) and (4).

Chapter 103.

Sundays, Holidays and Special Days.

Sec.

103-2. Hunting on Sunday.

103-4. Dates of public holidays.

Sec.

103-9. Prisoner of War Day.

§ 103-2. Hunting on Sunday.

If any person shall, except in defense of his own property, hunt on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a misdemeanor and pay a fine not exceeding fifty dollars (\$50.00) or [be] imprisoned not exceeding 30 days. Provided, that the provisions hereof shall not be applicable to military reservations, the jurisdiction of which is exclusively in the federal government, or to field trials authorized by the Wildlife Resources Commission. Wildlife protectors are granted authority to enforce the provisions of this section. (1868-9, c. 18, ss. 1, 2; Code, s. 3783; Rev., s. 3842; C.S., s. 3956; 1945, c. 1047; 1967, c. 1003; 1979, c. 830, s. 13; 1989, c. 642, s. 3.)

Effect of Amendments. — The 1989 amendment, effective July 15, 1989, inserted "or to field trials authorized by

the Wildlife Resources Commission" at the end of the next-to-last sentence.

§ 103-4. Dates of public holidays.

(a) The following are declared to be legal public holidays:

(1) New Year's Day, January 1.

(1a) Martin Luther King, Jr.'s, Birthday, the third Monday in January.

(2) Robert E. Lee's Birthday, January 19.

(3) Washington's Birthday, the third Monday in February.

(3a) Greek Independence Day, March 25.

(4) Anniversary of signing of Halifax Resolves, April 12.

(5) Confederate Memorial Day, May 10.

(6) Anniversary of Mecklenburg Declaration of Independence, May 20.

(7) Memorial Day, the last Monday in May.

(8) Good Friday.

(9) Independence Day, July 4.

(10) Labor Day, the first Monday in September.

(11) Columbus Day, the second Monday in October.

(11a) Yom Kippur.

(12) Veterans Day, November 11.

(13) Tuesday after the first Monday in November in years in which a general election is to be held.

(14) Thanksgiving Day, the fourth Thursday in November.

(15) Christmas Day, December 25.

(1881, c. 294; Code, s. 3784; 1891, c. 58; 1899, c. 410; 1901, c. 25; Rev., s. 2838; 1907, c. 996; 1909, c. 888; 1919, c. 287; C.S., s. 2959; 1935, c. 212; 1959, c. 1011; 1969, c. 521; 1973, c. 53; 1979, c. 84; 1981, c. 135; 1983, c. 1; 1987, c. 25, s. 1; c. 851, ss. 1, 2; c. 853, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 25, s. 1, effective March 25, 1987, substituted "the third Monday in January" for "January 15" in subdivision (a)(1a).

Session Laws 1987, c. 851, ss. 1, 2, effective August 14, 1987, substituted

"Good Friday" for "Easter Monday" in subdivision (a)(8), and in the former last sentence of subsection (a), as it read prior to being deleted by Session Laws 1987, c. 853.

Session Laws 1987, c. 853, s. 2, effective August 14, 1987, deleted the former last sentence of subsection (a), relating to holidays for state and national banks only.

§ 103-9. Prisoner of War Day.

The ninth of April of each year is designated as Prisoner of War Recognition Day. (1989, c. 428, s. 1.)

Editor's Note. — Session Laws 1989, c. 428, s. 2 makes this section effective

upon ratification. The act was ratified June 23, 1989.

Chapter 104A.

Degrees of Kinship.

§ 104A-1. Degrees of kinship; how computed.

Cross References. — As to meaning of "next of kin," see § 41-6.1.

Editor's Note. — The case of *In re Will of Cobb*, 271 N.C. 307, 156 S.E.2d

285 (1967), cited under this section in the main volume, has been abrogated by statute. See § 41-6.1.

Chapter 104E.

North Carolina Radiation Protection Act.

<p>Sec. 104E-5. Definitions. 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities invalid; petition to preempt local ordinance. 104E-7. Radiation Protection Commission — Creation and powers. 104E-8. Radiation Protection Commission — Members; selections; removal; compensation; quorum; services. 104E-9. Powers and functions of Department of Environment,</p>	<p>Sec. Health, and Natural Resources. 104E-10.1. Additional requirements for low-level radioactive waste facilities. 104E-15. Transportation of radioactive materials. 104E-17. Payments to State and local agencies. 104E-18. Security for emergency response and perpetual maintenance costs. 104E-19. Fees. 104E-24. Administrative penalties.</p>
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§ 104E-5. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

(6) "Department" means the State Department of Environment, Health, and Natural Resources.

(1975, c. 718, s. 1; 1981, c. 704, s. 8; 1989, c. 727, s. 219(16).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), as noted under this

section in the main volume.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in subdivision (6).

§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities invalid; petition to preempt local ordinance.

(a) Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances (including but not limited to those imposing taxes, fees, or charges or regulating health, environment, or land use), any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a low-level radioactive waste facility which the Governor's Waste Management Board (hereinafter "the Board") has preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the extent necessary to effectuate the purposes of this Chapter or Chapter 104G of the General Statutes. For the purpose of this section, the Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the board of commissioners of the county in which the facility is or is to be located. If the facility is or is to be located in more than one county, or if the facility is or is to be located within the boundaries

of a city, the governing body of each city and county in which any portion of the facility is or is to be located shall have one appointment. Failure of a local governing body to make an appointment within 30 days after receipt of written notice from the Board to do so shall be deemed a vacancy in an unexpired term and shall be filled by appointment by the Board. The terms of members appointed by local governing bodies shall end upon the final determination of the Board under this section, and such members shall serve as members of the Board only for the purpose of this section.

(b) When a low-level radioactive waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the operator of the proposed facility or the North Carolina Low-Level Radioactive Waste Management Authority established pursuant to Chapter 104G of the General Statutes (hereinafter "the Authority") may petition the Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Board, the Board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality within 60 days after receipt of the petition by the Board. The Board shall give notice of the public hearing by:

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested such notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address which appears on the mailing list maintained by the Board, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Any interested person may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested person may submit written evidence to the Board for its consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(d) The Board shall determine whether or to what extent to preempt local ordinance(s) so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Board shall preempt a local ordinance only if it makes all five of the following findings:

- (1) That there is a local ordinance which would prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility;
- (2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected low-level radioactive waste management needs of this State or to comply with the terms of any interstate agreement for

- the management of low-level radioactive waste to which the State is a party and therefore serves the interests of the citizens of the State as a whole;
- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);
 - (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
 - (5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator or the Authority has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable local ordinance(s).

If the Board does not make all five findings set out above, the Board shall not preempt the challenged local ordinance(s). The Board's decision shall be in writing and shall identify the evidence submitted to the Board plus any additional evidence used in arriving at the decision.

(e) The decision of the Board shall be final unless a party to the action shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-29 and this section, files a written appeal within 30 days of the date of such decision. The record on appeal shall consist of all materials and information submitted to or considered by the Board, the Board's written decision, a complete transcript of the hearing, all written material presented to the Board regarding the location of the facility, the specific findings required by subsection (d) of this section, and any minority positions on the specific findings required by subsection (d) of this section. The scope of judicial review shall be that the court may affirm the decision of the Board, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for such reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply. (1981, c. 704, s. 9; 1987, c. 633, s. 6; c. 850, s. 4; 1987 (Reg. Sess., 1988), c. 993, s. 24; c. 1082, s. 10; c. 1100, s. 40.5; 1989, c. 168, s. 14.)

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 9 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 48 is a severability clause.

Session Laws, 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988)

c. 993, s. 24, effective June 27, 1988, rewrote subsections (a) through (d), inserted a comma following "the judge shall set out in writing" in the second paragraph of subsection (e), and added subsection (f).

Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 10, effective July 8, 1988, rewrote subdivision (d)(1), as previously rewritten by Session Laws 1987 (Reg. Sess., 1988), c. 993.

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 40.5, effective July 1, 1988, substituted "That their" for "Their" in subdivision (d)(1), as rewritten by Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 24 and c. 1082, s. 10.

The 1989 amendment, effective May 30, 1989, rewrote this section.

§ 104E-7. Radiation Protection Commission — Creation and powers.

(a) There is hereby created the North Carolina Radiation Protection Commission of the Department of Environment, Health, and Natural Resources with the power to promulgate rules and regulations to be followed in the administration of a radiation protection program. All rules and regulations for radiation protection that were adopted by the Commission for Health Services and are not inconsistent with the provisions of this Chapter shall remain in full force and effect unless and until repealed or superseded by action of the Radiation Protection Commission. The Radiation Protection Commission is authorized:

- (1) To advise the Department in the development of comprehensive policies and programs for the evaluation, determination, and reduction of hazards associated with the use of radiation;
- (2) To adopt, promulgate, amend and repeal such rules, regulations and standards relating to the manufacture, production, transportation, use, handling, servicing, installation, storage, sale, lease, or other disposition of radioactive material and radiation machines as may be necessary to carry out the policy, purpose and provisions of this Chapter. To this end, the Commission is authorized to require licensing or registration of all persons who manufacture, produce, transport, use, handle, service, install, store, sell, lease, or otherwise dispose of radioactive material and radiation machines, as the Commission deems necessary to provide an adequate protection and supervisory program: provided, that prior to adoption of any regulation or standard, or amendment or repeal thereof, the Commission shall afford interested parties the opportunity, at a public hearing, as provided in G.S. 104E-13, to submit data or views orally or in writing. The recommendations of nationally recognized bodies in the field of radiation protection shall be taken

- into consideration in such standards relative to permissible dosage of radiation;
- (3) To require all sources of ionizing radiation to be shielded, transported, handled, used, stored, or disposed of in such a manner to provide compliance with the provisions of this Chapter and rules, regulations and standards adopted hereunder;
 - (4) To require, on prescribed forms furnished by the Department, registration, periodic reregistration, licensing, or periodic relicensing of persons to use, manufacture, produce, transport, transfer, install, service, receive, acquire, own, or possess radiation machines and other sources of radiation;
 - (5) To exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this Chapter when the Commission determines that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public;
 - (6) To promulgate rules and regulations pursuant to this Chapter which may provide for recognition of other state and federal licenses as the Commission shall deem desirable, subject to such registration requirements as it may prescribe; and exercise all incidental powers necessary to carry out the provisions of this Chapter;
 - (7) To provide by rule and regulation for an electronic product safety program to protect the public health and safety, which program may authorize regulation and inspection of sources of nonionizing radiation throughout the State.
 - (8) To adopt, amend, repeal or promulgate such rules, regulations, and standards relating to the nonradioactive, toxic and hazardous aspects of radioactive waste disposal, as may be necessary to protect the public health and safety.
 - (9) To adopt regulations establishing financial responsibility requirements for maintenance, operation and long-term care of low-level radioactive waste facilities, including insurance during the operation of the facility and adequate assurance of availability of funds for facility closure and post-closure monitoring and corrective measures.
 - (10) To adopt rules which exempt a generator of low-level radioactive waste who operates a low-level radioactive waste facility solely for the management of wastes he produces, from any requirement, made applicable by this Chapter or rules adopted pursuant to this Chapter to low-level radioactive waste facilities generally where, because of the low volume or activity of the wastes involved, such exemption would not endanger the public health or safety, or the environment.

(1975, c. 718, s. 1; 1979, c. 694, s. 3; 1981, c. 704, s. 10; 1987, c. 850, s. 5; 1989, c. 727, s. 219(17).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws

1987, c. 850, s. 27(a), as noted under this section in the main volume.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for

"Human Resources" in the first sentence of subsection (a).

§ 104E-8. Radiation Protection Commission — Members; selections; removal; compensation; quorum; services.

The Commission shall consist of 10 voting public members and 10 nonvoting ex officio members. The 10 voting public members of the Commission shall be appointed by the Governor as follows:

- (1) One member who shall be actively involved in the field of environmental protection;
- (2) One member who shall be an employee of one of the licensed public utilities involved in the generation of power by atomic energy;
- (3) One member who shall have experience in the field of atomic energy other than power generation;
- (4) One member who shall be a scientist or engineer from the faculty of one of the institutions of higher learning in the State;
- (5) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Medical Society;
- (6) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Dental Society;
- (7) One member who shall have recognized knowledge in the field of radiation and its biological effects from the State at large;
- (8) One member who shall have recognized knowledge in the field of radiation and its biological effects and who shall be a practicing hospital administrator from the North Carolina Hospital Association;
- (9) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Chiropractic Association;
- (10) One member who shall have recognized knowledge in the clinical application of radiation, shall be a practicing radiologic technologist from the North Carolina Society of Radiologic Technologists, and shall be certified by the American Registry of Radiologic Technologists;
- (11) One member who shall have recognized knowledge in the clinical application of radiation and shall be a practicing podiatrist licensed by the North Carolina State Board of Podiatry Examiners.

Public members so appointed shall serve terms of office of four years. Four of the initial members shall be appointed for two years, three members for three years, and three members for four years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a public member shall be for the balance of the unexpired term. At the expiration of each public member's term, the Governor shall reappoint or replace the member with a member of like qualifications. At its first meeting on or after July first of each year, the Commission shall designate by election one of its public members as chairman and one of

its public members as vice-chairman to serve through June thirtieth of the following year.

The 10 ex officio members shall be appointed by the Governor, shall be members or employees of the following State agencies or their successors, and shall serve at the Governor's pleasure:

- (1) The Utilities Commission;
- (2) The Commission for Health Services;
- (3) The Environmental Management Commission;
- (4) The Board of Transportation;
- (5) The Division of Civil Preparedness of the Department of the Military and Veterans Affairs;
- (6) The radiation protection program within the Department of Environment, Health, and Natural Resources;
- (7) The Department of Labor;
- (8) The Industrial Commission;
- (9) The Department of Insurance;
- (10) The Medical Care Commission.

The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13.

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.

A majority of the public members of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Environment, Health, and Natural Resources. (1975, c. 718, s. 1; 1989, c. 727, s. 219(18).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and

Natural Resources" for "Human Resources" in subdivision (6) of the third paragraph, and in the last paragraph.

§ 104E-9. Powers and functions of Department of Environment, Health, and Natural Resources.

The Department of Environment, Health, and Natural Resources is authorized:

- (8) To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators and users of low-level radioactive waste facilities pursuant to the provisions of this Chapter. (1975, c. 718, s. 1; 1979, c. 694, s. 4; 1981, c. 704, s. 10.1; 1987, c. 633, s. 7; 1987 (Reg. Sess., 1988) c. 993, s. 25; 1989, c. 727, s. 219(19).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amend-

ment, effective June 27, 1988, inserted "and users" and deleted "disposal" preceding "facilities" in subdivision (8).

The 1989 amendment, effective July 1, 1989, substituted "Environment,

Health, and Natural Resources" for "Human Resources" in the catchline and in the introductory language.

§ 104E-10. Licensing of by-product, source, and special nuclear materials and other sources of ionizing radiation.

Editor's Note. —
Session Laws 1987 (Reg. Sess., 1988),
c. 993, s. 23, repealed Session Laws

1987, c. 850, s. 27(a), as noted under this section in the main volume.

§ 104E-10.1. Additional requirements for low-level radioactive waste facilities.

(b) Each permit applicant or permit holder (or any parent or subsidiary corporation if the permit applicant or permit holder is a corporation), as a condition of receiving or holding a permit, shall have an independent annual audit by a firm of duly licensed certified public accounts carrying a minimum of five million dollars (\$5,000,000) professional liability insurance coverage, proof of which coverage shall be provided with the issuance of the audit report. Each permit applicant or permit holder referred to above shall also provide the Department of Environment, Health, and Natural Resources with a copy of the report and shall submit a copy of the report to the State Auditor for approval regarding its adequacy and completeness. As a minimum, the required report shall include the financial statements prepared in accordance with generally accepted accounting principles, all disclosures in the public interest required by law, and the auditor's opinion and comments relating to the financial statements. The audit shall be performed in conformity with generally accepted auditing standards.

(1981, c. 704, s.11; 1985, c. 529; 1987, c. 24, ss. 1-3; c. 850, ss. 7, 8; 1989, c. 727, s. 219(20).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —
Session Laws 1987 (Reg. Sess., 1988),
c. 993, s. 23, repealed Session Laws
1987, c. 850, s. 27(a), as noted under this section in the main volume.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the second sentence of subsection (b).

§ 104E-10.3. Low-level radioactive waste facility access licenses.

Editor's Note. —
Session Laws 1987 (Reg. Sess., 1988),
c. 993, s. 23, repealed Session Laws

1987, c. 850, s. 27(a), as noted under this section in the main volume.

§ 104E-13. Administrative procedures and judicial review.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Session Laws 1989, c. 727, s. 219(19)

purported to substitute "Environment, Health, and Natural Resources" for "Human Resources" in this section; however, no such language occurs in this section.

§ 104E-15. Transportation of radioactive materials.

(b) The Department is authorized to enter into agreements with the respective federal agencies designed to avoid duplication of effort and/or conflict in enforcement and inspection activities so that:

- (1) Rules and regulations adopted by the Commission pursuant to this section of this Chapter may be enforced, within their respective jurisdictions, by any authorized representatives of the Department of Environment, Health, and Natural Resources and the Department of Transportation, according to mutual understandings between such departments of their respective responsibilities and authorities.
- (2) The Department, through any authorized representative, is authorized to inspect any records of persons engaged in the transportation of radioactive materials during the hours of business operation when such records reasonably relate to the method or contents of packing, marking, loading, handling, or shipping of radioactive materials within the State.
- (3) The Department, through any authorized representative, may enter upon and inspect the premises or vehicles of any person engaged in the transportation of radioactive materials during hours of business operation, with or without a warrant, for the purpose of determining compliance with the provisions of this Chapter and the rules and regulations promulgated by the Commission.

(1975, c. 716, s. 7; c. 718, s. 1; 1989, c. 727, s. 219(22).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1989

amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in subdivision (b)(1).

§ 104E-16. Nonreverting Radiation Protection Fund.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws

1987, c. 850, s. 27(a), as noted under this section in the main volume.

§ 104E-17. Payments to State and local agencies.

Upon completion of any project or activity stated in G.S. 104E-16(1), and from time to time during any project or activity stated in G.S. 104E-16(2), each State and local agency that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary of Environment, Health, and Natural Resources to each such agency from the Radiation Protection Fund. Upon completion of any project or activity stated in G.S. 104E-16(1), and from time to time during any project or activity stated in G.S. 104E-16(2), the Secretary of Environment, Health, and Natural Resources shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the radioactive materials or the release thereof which necessitated said project or activity. Any person having control over the radioactive materials or the release thereof and any other person causing or contributing to an incident necessitating any project or activity stated in G.S. 104E-16 shall be directly liable to the State for the necessary expenses incurred thereby and the State shall have a cause of action to recover from any or all such persons. If the person having control over the radioactive materials or the release thereof shall fail or refuse to pay the sum expended by the State, the Secretary of Environment, Health, and Natural Resources shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the project or activity was undertaken by the State, to recover such cost and expenses.

In any action instituted by the Attorney General under this section, a verified and itemized statement of the expenses incurred by the State in any project or activity stated in G.S. 104E-16 shall be filed with the complaint and shall constitute prima facie the amount due the State; and any judgment for the State thereon shall be for such amount in the absence of allegation and proof on the part of the defendant or defendants that the statement of expenses incurred by and the amount due the State is not correct because of an error in:

- (1) Calculating the amount due, or
- (2) Not properly crediting the account with any cash payment or payments or other satisfaction which may have been made thereon. (1975, c. 718, s. 1; 1989, c. 727, s. 219(23).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and

Natural Resources" for "Human Resources" in the second, third, and fifth sentences of the first paragraph.

§ 104E-18. Security for emergency response and perpetual maintenance costs.

(c) Notwithstanding the requirements of this section, the bond, insurance or other security for a low-level radioactive waste facility shall be filed in accordance with the provisions of Chapter 104G of the General Statutes. (1975, c. 718, s. 1; 1981, c. 704, s. 12; 1987, c. 850, s. 12; 1987 (Reg. Sess., 1988), c. 1082, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 9 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising

under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective July 8, 1988, substituted "requirements" for "provision" in subsection (c).

§ 104E-19. Fees.

(a) In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(c), of enforcing and carrying out the inspection provisions in G.S. 104E-7(7) and 104E-11(a), of administering the licensing program in G.S. 104E-10.3, and of licensing low-level radioactive waste facilities operated pursuant to Chapter 104G of the General Statutes, the Department is authorized to charge and collect such reasonable fees as it may by rule or regulation establish.

(1975, c. 718, s. 1; 1981, c. 704, s. 13; 1987, c. 633, s. 9; c. 850, s. 13; 1987 (Reg. Sess., 1988), c. 993, s. 26.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amend-

ment, effective June 27, 1988, deleted "and" preceding "of enforcing" and added "of administering the licensing program in G.S. 104E-10.3, and of licensing low-level radioactive waste facilities operated pursuant to Chapter 104G of the General Statutes" in subsection (a).

§ 104E-24. Administrative penalties.

(a) The Department may impose an administrative penalty on any person:

- (1) Who fails to comply with this Chapter, any order issued hereunder, or any rules adopted pursuant to this Chapter;
- (2) Who refuses to allow an authorized representative of the Radiation Protection Commission or the Department of Environment, Health, and Natural Resources a right of entry as provided for in G.S. 104E-11 or impounding materials as provided for in G.S. 104E-14.

(1981, c. 704, s. 14; 1987, c. 850, s. 14; 1989, c. 727, s. 219(24).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in subdivision (a)(2).

§ 104E-26. Standards and criteria for licensing low-level radioactive waste facilities.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws

1987, c. 850, s. 27(a), as noted under this section in the main volume.

§ 104E-27. Volume reduction required.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws

1987, c. 850, s. 27(a), as noted under this section in the main volume.

Chapter 104F.

Southeast Interstate Low-Level Radioactive Waste Management Compact.

Sec.

104F-1. (See note) Compact entered into; form of Compact.

Sec.

104F-4. (See note) Advisory committee.

§ 104F-1. (See note) Compact entered into; form of Compact.

The Southeast Interstate Low-Level Radioactive Waste Management Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Southeast Interstate Low-Level Radioactive Waste Management Compact

ARTICLE V. Development and operation of facilities

(a) Any party state which becomes a host state in which a regional facility is operated, shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

(b) A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines Congress has materially altered the conditions of this compact.

(c) Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

(d) No party state shall have any form of arbitrary prohibition on the treatment, storage or disposal of low-level radioactive waste within its borders.

(e) No party state shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.

ARTICLE VII. Eligible parties, withdrawal, revocation, entry into force, termination

(a) This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

(b) Any state not expressly declared eligible to become a party state to this compact in section (a) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section (a) of this Article.

(c) Each state eligible to become a party state to this compact is declared a party state upon enactment of this compact into law by that state and upon payment of the fees required by Article IV (h)(1). The Commission shall be the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

(d) (1) The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article IV (h)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

(2) All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section (c) of this Article.

(3) The consent of the Congress shall be required for full implementation of this compact. The provisions of Article V, section (d) shall not become effective until the effective date of the import ban authorized by Article IV, section (1) as approved by Congress. The Congress may by law withdraw its consent only every five years.

(e) No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

(f) Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only on the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction im-

posed or as provided in the resolution of the Commission imposing the sanction.

The Commission shall, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolution to the governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states, as well as chairmen of the appropriate committees of the Congress.

(g) Subject to the provisions of Article VII section (h), any party state may withdraw from this compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the Governor of such party state of the rescission of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of the Congress.

(h) The right of a party state to withdraw pursuant to Article VII section (g) shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress. For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.

(i) This compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the compact in each party state.

(1983, c. 714, s. 1; 1987, c. 850, s. 25.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Contingent Delayed Repeal of Chapter 104F. — Session Laws 1987, c. 850, s. 26, provides: "Unless every party state to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) has enacted legislation to amend the Compact Law in force in that state in substantially the manner set out in section 25 of this act by 31 December 1988; and unless the Congress of the United States has amended the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1986), so as to consent to the amendments to the Compact required to be made by this section on or before 31 December 1992; North Carolina shall withdraw from the Compact. The North Carolina Compact Commissioners shall certify to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Secretary of State that the requirements of this sec-

tion have, or have not, been met. In the event that the party states to the Compact have not enacted legislation to amend the Compact as required by this section by 31 December 1988, Chapter 104F of the General Statutes is repealed as of that date. In the event that the Congress has not amended the Low-Level Radioactive Waste Policy Amendments Act so as to consent to the amendments required to be made by this section by 31 December 1992, Chapter 104F of the General Statutes is repealed as of that date."

On December 22, 1988, the North Carolina Compact Commissioners certified that every party state had amended its compact law in substantially the same form as required by Session Laws 1987, c. 850, ss. 25 and 26.

Session Laws 1987, c. 850, s. 27(a) provided: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this sec-

tion is void." However, Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a).

Session Laws 1987, c. 850, s. 27(b) is a severability clause.

Effect of Amendments. — The 1987

amendment, effective August 14, 1987, added subsection (e) to Article V, rewrote the first sentence of subsection (g) of Article VII, added present subsection (h) of Article VII, and redesignated former subsection (h) of Article VII as subsection (i) thereof.

OPINIONS OF ATTORNEY GENERAL

Authority to Impose Surcharge and Use of Funds Collected. — South Carolina has the authority to impose a surcharge on the southeast generators using the Barnwell facility and to transfer these funds to the Southeast Compact Commission, and the Commission has the authority to use these funds to provide financial assistance for the prelicensing activities of the second regional disposal facility in North Carolina. See opinion of Attorney General to Mr. Tenney I. Deane, Jr., Executive Director, North Carolina Low-Level Radioactive Waste Management Authority, N.C.A.G. (August 17, 1989).

The State of South Carolina has the legal authority to levy a surcharge on the Southeast generators using the Barnwell facility, especially since South Carolina has the authority to levy surcharges on all users of the Barnwell facility; however, pursuant to the Compact provisions and other provisions of South Carolina law, the surcharge can only be levied to fund the annual budget of the commission. See opinion of Attorney General to Mr. Tenney I. Deane, Jr., Executive Director, North Carolina Low-Level Radioactive Waste Management Authority, N.C.A.G. (August 17, 1989).

§ 104F-2. (See note) Appointment of members to the Southeast Interstate Low-Level Radioactive Waste Management Commission.

Contingent Delayed Repeal of Chapter 104F. — As to contingent de-

layed repeal of Chapter 104F, see the note under § 104F-1.

§ 104F-3. (See note) Violation a misdemeanor.

Contingent Delayed Repeal of Chapter 104F. — As to contingent de-

layed repeal of Chapter 104F, see the note under § 104F-1.

§ 104F-4. (See note) Advisory Committee.

The Advisory Committee to the North Carolina Members of the Low-Level Radioactive Waste Management Compact Commission is hereby created. It shall consist of seven voting members, two to be appointed by the Governor, who shall be members of the Radiation Protection Commission, two by the President of the Senate, and two by the Speaker of the House of Representatives. The Chief of the Radiation Protection Section of the Division of Facility Services of the Department of Environment, Health, and Natural Resources shall be an ex officio member. The members shall serve for two-year terms. A vacancy in membership shall be filled by the appointing authority who made the initial appointment. A member whose term expires may be reappointed.

It shall be the duty of the Committee to consult with and advise the State's representatives to the Compact Commission concerning technical and policy matters.

The Governor shall appoint the Committee chairman and he may be reappointed. The Committee shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building and the Legislative Office Building shall be available to the Committee, subject to approval of the Legislative Services Commission. Legislative members of the Committee shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1. Members of the Committee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Committee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6.

Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Committee without cost except for travel, subsistence, supplies, and materials. The Committee may solicit, employ, or contract for technical assistance and clerical assistance and may purchase or contract for the materials and services it needs. (1983, c. 714, s. 3; 1989, c. 727, s. 219(25).)

Contingent Delayed Repeal of Chapter 104F. — As to contingent delayed repeal of Chapter 104F, see the note under § 104F-1.

Effect of Amendments. — The 1989

amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the third sentence of the first paragraph.

§ 104F-5. (See note) Withdrawal from Compact.

Contingent Delayed Repeal of Chapter 104F. — As to contingent de-

layed repeal of Chapter 104F, see the note under § 104F-1.

Chapter 104G.

Editor's Note. — The legislation and annotations affecting Chapter 104G have been included in a recently published replacement chapter.

Chapter 105.

Editor's Note. — The legislation and annotations affecting Chapter 105 have been included in a recently published replacement chapter.

Chapter 105A.

Editor's Note. — The legislation and annotations affecting Chapter 105A have been included in a recently published replacement chapter.

Chapter 105B.

Editor's Note. — The legislation and annotations affecting Chapter 105B have been included in a recently published chapter.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1989

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1989 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina

