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THE GENERAL STATUTES OF NORTH CAROLINA

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1979 SUPPLEMENT

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

Under the Direction of

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

Volume 3A, Part II

1978 Replacement

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

Place in Pocket of Corresponding Volume of Main Set.

THE MICHIE COMPANY

Law Publishers

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Preface

This Supplement to Replacement Volume 3A, Part II, contains the general laws of a permanent nature enacted at the second 1977 and the first 1979 Sessions of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

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

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

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

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

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

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the second 1977 and the first 1979 Sessions of the General Assembly affecting Chapters 113 through 116A of the General Statutes.

Annotations:

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

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

The General Statutes of North Carolina

1979 Supplement

VOLUME 3A, PART II

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SUBCHAPTER I. GENERAL PROVISIONS.**ARTICLE 1.***Powers and Duties of Department of Natural Resources and Community Development Generally.*

§ 113-24: Repealed by Session Laws 1979, c. 830, s. 5, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 1B.

Aviation.

§§ 113-28.5 to 113-28.12: Recodified as §§ 63-65 to 63-72 by Session Laws 1979, c. 148, s. 5.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by Department of Natural Resources and Community Development.

Declaratory Judgment Premature. — None of the plaintiffs seeking a declaratory judgment that Article 2 of Chapter 113 and Article 3 of Chapter 113A are unconstitutional and praying that defendants be permanently enjoined from adopting a "Master Plan" for the Eno River State Park had as yet been directly and adversely affected by the statutes they sought to challenge, and the plaintiffs failed to show the existence of a genuine controversy cognizable under the Declaratory Judgment Act, where no

condemnation proceeding affecting any lands of the plaintiffs had as yet been instituted, and all that had occurred was that employees of the Division of Parks and Recreation had made initial alternative planning proposals for a State park which contemplated ultimate acquisition of certain lands of the plaintiffs for park purposes. *Barbour v. Little*, 37 N.C. App. 686, 247 S.E.2d 252, cert. denied, 295 N.C. 733, 248 S.E.2d 862 (1978).

§ 113-39. License fees for hunting and fishing on government-owned property unaffected.

Amendment Effective July 1, 1980. — Session Laws 1979, c. 830, s. 6, will amend this section by substituting "G.S. 113-301.1(a)" for

"G.S. 113-113" near the beginning of the first sentence.

ARTICLE 6.

Fishing Generally.

§ 113-78: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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SUBCHAPTER II-A. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

ARTICLE 6B.

License Agents.

§§ 113-81.4 to 113-81.13: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-82: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-83: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Provisions of Game Law Referring to "Fur-bearing Animals" Are Inapplicable to Foxes. — The trial court's conclusion that it was the legislative intent to regard the fox in the traditional manner as a game animal to be hunted for sport and as a fur-bearing animal when lawfully taken was in conflict with § 113-81. Provisions of the Game Law referring to "fur-bearing animals" do not apply to foxes. *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

§ 113-84. Powers and duties of the Wildlife Resources Commission. — It shall be unlawful to take or pursue any of the wildlife of the State at any time or in any manner, except at such times and in such manner as the supply of said wildlife may justify, and the said Wildlife Resources Commission is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

- (9) Notwithstanding any provision of G.S. 113-104 to the contrary, it shall be lawful for a properly licensed person hunting on a licensed controlled shooting preserve to take game birds in the vicinity of operating bird feeders which contain grain or other food, provided that the number, type and location of such feeders have been approved by the Wildlife Resources Commission, and provided further that the locations of all such feeders are accurately depicted on a map of the controlled shooting preserve provided to the Wildlife Resources Commission in accordance with its regulations. (1935, c. 486, s. 4; 1957, cc. 386, 841; 1961, cc. 311, 1056; 1973, c. 1262, s. 18; 1979, c. 769.)

Local Modification. — By virtue of Session Laws 1979, c. 546, Pender should be stricken from the replacement volume.

Editor's Note. — The 1979 amendment added subdivision (9).

As the rest of the section was not changed by

the amendment, only the introductory language and subdivision (9) are set out.

Section Repealed Effective July 1, 1980. — This section is repealed, effective July 1, 1980, by Session Laws 1979, c. 830, s. 1.

§§ 113-85 to 113-94: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-95. Licenses required. — No person shall at any time take any wild animals or birds without first having procured a license as provided by this Article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Executive Director of the North Carolina Wildlife Resources Commission. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Executive Director of the North Carolina Wildlife Resources Commission, game protectors and such other persons as the Executive Director of the North Carolina Wildlife Resources Commission may authorize in writing:

License Fees

Nonresident hunting license	\$31.00
Nonresident six-day hunting license	25.00
Resident State hunting license	9.50
Resident combination hunting and fishing license	12.50
Resident county hunting license	4.50.

One dollar (\$1.00) of each nonresident hunting license fee and nonresident six-day hunting license fee shall be used by the North Carolina Wildlife

Resources Commission for the propagation, management, and control of migratory waterfowl in North Carolina and a like portion of such license fees shall be contributed by the North Carolina Wildlife Resources Commission to a proper agency or agencies in the United States; said sum to be spent in Canada for the propagation, management, and control of migratory waterfowl.

Any applicant who is a resident of this State shall pay to the authorized license-issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, as his fee for issuing each license, the sum of twenty-five cents (25¢) for each license costing less than five dollars (\$5.00) and the sum of fifty cents (50¢) for each license costing five dollars (\$5.00) or more. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. Any person who shall have resided in this State for a period of at least six months or shall have maintained his domicile in this State for a period of at least 60 days immediately preceding the making of application shall be deemed a resident for the purposes of this Article, provided that when resort must be had to the circumstances of domicile rather than to the mere fact of residence, such person shall sign a certificate of domicile on a form supplied by the Wildlife Resources Commission stating the necessary facts and intent to constitute legal domicile within this State for the required period of time. A nonresident of this State shall obtain a nonresident hunting license which shall entitle him to hunt during the entire season, or such nonresident may obtain a nonresident six-day hunting license which shall entitle him to hunt during six consecutive days during the open season. The combination hunting and fishing license may be obtained only by a resident of this State and shall authorize him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Wildlife Resources Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of five dollars and twenty-five cents (\$5.25), the Wildlife Resources Commission being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Executive Director of the North Carolina Wildlife Resources Commission is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Executive Director of the North Carolina Wildlife Resources Commission may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his

official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands and in the county where the deed to such lands is registered by payment of a license fee of nine dollars and fifty cents (\$9.50) plus fifty cents (50¢) for the issuing officer. Such nonresident must make a sworn application to the Executive Director of the North Carolina Wildlife Resources Commission, on forms provided by said Executive Director of the North Carolina Wildlife Resources Commission, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Executive Director of the North Carolina Wildlife Resources Commission, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty 100 acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve," as defined in subdivision (7) of G.S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of nine dollars and fifty cents (\$9.50) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license.

Any resident of this State, irrespective of age, who is totally disabled (physically incapable of being gainfully employed) may apply to the license section of the Wildlife Resources Commission in Raleigh, on a form to be prepared and on request distributed by the Commission, for a permanent, nontransferable combination hunting and fishing license. If the Commission is satisfied that the applicant is totally disabled, it shall issue to such person a permanent nontransferable combination hunting and fishing license without payment of a fee.

Any resident of this State who has attained the age of 65 years may, upon making application, including satisfactory proof of age, to the license section of the Wildlife Resources Commission at its headquarters in Raleigh, and upon payment of a fee of ten dollars (\$10.00), receive from the Wildlife Resources Commission a nontransferable combination hunting and fishing license which shall be valid for the life of such person. Such license shall not relieve the holder thereof from the purchase of any additional license or permit which may be required for hunting big game, fishing for mountain trout, hunting and fishing on public wildlife management areas, or using special devices for fishing inland waters. Provided, however, that such lifetime combination hunting and fishing license shall be issued without charge to any such resident applicant who has attained the age of 70 years.

The certificate of domicile required in the third paragraph of this section to be supplied by the Wildlife Resources Commission shall as near as practicable be in form and contents as follows:

North Carolina Wildlife Resources Commission
Raleigh, North Carolina

State of North Carolina }
County of } Certificate of Domicile

I,, do hereby represent and certify to
(name of applicant)

the North Carolina Wildlife Resources Commission that on the
... day of, 19...., I established my bona fide residence and abode
at

(street or R.F.D. No.) (city or town)

North Carolina; and I do hereby further represent and certify that at the time
of establishment of such resident or abode and at all times since my intention
was, has been, and still is to maintain such abode, or some other abode located
within the State of North Carolina, as my principal place of residence either
permanently or indefinitely.

Witness my hand this, the day of,
19....

.....
(Signature of applicant)

Witness:

(1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849,
s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971,
c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4; 1977,
c. 658; 1979, c. 748, s. 1.)

Editor's Note. —

The 1979 amendment, effective Aug. 1, 1979,
rewrote the schedule of license fees in the first
paragraph, increasing all fees. Session Laws
1979, c. 748, s. 9, provides, in part: "That in order
to allow adequate time for the printing and
distribution of hunting licenses and combination
hunting and fishing licenses incorporating the
amended fees, the 1978-79 hunting licenses and
combination hunting and fishing licenses which
are scheduled to expire on Aug. 1, 1979, are valid
through Sept. 1, 1979."

Section Repealed Effective Aug. 1, 1980. —

This section is repealed, effective Aug. 1, 1980,

by Session Laws 1979, c. 830, s. 1. Session Laws
1979, c. 830, s. 17, provides, in part: "The
provisions of this act generally take effect July
1, 1980. Those provisions that specifically apply
to annual licenses which expire on July 31 of
each year take effect on Aug. 1, 1980."

Constitutionality. — Enforcement of North
Carolina's fishing license requirement against
non-Indian fishermen on the reservation of the
Eastern Band of Cherokee Indians violates the
federal preemption doctrine. *Eastern Band of
Cherokee Indians v. North Carolina Wildlife
Resources Comm'n*, 588 F.2d 75 (4th Cir. 1978).

§ 113-95.1: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980,
and August 1, 1980.

Cross References. — For game laws
generally effective July 1, 1980, and Aug. 1,
1980, see §§ 113-127 to 113-316. And see note
catchlined "Revision of Subchapter,"
immediately preceding Article 12 of this
Chapter.

Editor's Note. — Session Laws 1979, c. 830, s.
17, provides, in part: "The provisions of this act
generally take effect July 1, 1980. Those
provisions that specifically apply to annual
licenses which expire on July 31 of each year
take effect on August 1, 1980. Persons
exercising rights under annual licenses

renewable each January 1 on the effective date
of this act, however, may continue to utilize
those licenses until their expiration subject to
the provisions of this act relating to restrictions
upon and suspension, revocation, and
termination of licenses. The North Carolina
Wildlife Resources Commission may
administratively provide for the continued use or
the orderly replacement, or both, of permanent
licenses and permits outstanding upon the
effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The
repeal of Article 6 and Subchapters IIA and III

and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in

Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-95.2. Big-game hunting license. — In addition to such hunting licenses as are required by G.S. 113-95, no one may hunt any species of big game without first having procured a big-game hunting license which shall be issued to a resident of this State upon payment of a license fee in the sum of four dollars and twenty-five cents (\$4.25) plus twenty-five cents (25¢) for the issuing agent, and to a nonresident of this State upon payment of a license fee in the sum of eighteen dollars (\$18.00) plus fifty cents (50¢) for the issuing agent. For the purpose of this section "big game" is defined as deer, bear, wild boar and wild turkey. (1969, c. 1042, s. 7; 1975, c. 197, s. 5; 1977, c. 746, s. 1; 1979, c. 748, s. 2.)

Editor's Note. —

The 1979 amendment, effective Aug. 1, 1979, substituted "four dollars and twenty-five cents (\$4.25)" for "three dollars and twenty-five cents (\$3.25)" and "eighteen dollars (\$18.00)" for "fourteen dollars and fifty cents (\$14.50)."

Session Laws 1979, c. 748, s. 9, provides, in part: "That in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79

hunting licenses and combination hunting and fishing licenses which are scheduled to expire on Aug. 1, 1979, are valid through Sept. 1, 1979."

Section Repealed Effective Aug. 1, 1980. —

This section is repealed, effective Aug. 1, 1980, by Session Laws, 1979, c. 830, s. 1. Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

§§ 113-95.3, 113-95.4: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-95.5. Primitive weapons hunting license. — Any person may obtain a license to hunt wild animals or birds with bow and arrow, muzzle-loading firearm or other primitive weapon during any special season established by the Wildlife

Resources Commission for hunting with authorized primitive weapons on payment of a license fee of five dollars and fifty cents (\$5.50) plus fifty cents (50¢) for the issuing agent. This license shall not relieve the holder thereof from the necessity of purchasing an appropriate resident or nonresident hunting license or any additional license or permit which may be required for hunting big game or hunting on game lands. (1975, c. 197, s. 7; c. 673, s. 1; 1979, c. 748, s. 3.)

Editor's Note. —

The 1979 amendment, effective Aug. 1, 1979, increased the fee in the first sentence from \$4.50 to \$5.50. Session Laws 1979, c. 748, s. 9, provides, in part: "That in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on Aug. 1, 1979, are valid through Sept. 1, 1979."

§ 113-95.6. Sportsman's combination license. — In lieu of the hunting licenses required by G.S. 113-95, 113-95.2 and 113-95.5 and the fishing licenses required by G.S. 113-271 and 113-272, an applicant may obtain a sportsman's combination license which entitles the holder thereof, during the open seasons and subject to the applicable bag, creel, and possession limits, to hunt with firearms or authorized primitive weapons wild animals and birds, including big game, and to fish by means of hook and line in joint and inland fishing waters, including public mountain trout waters, on any lands which are open to hunting and fishing, including game lands. The sportsman's combination license authorized by this section shall be issued upon payment of a license fee in the sum of thirty dollars and fifty cents (\$30.50) by a resident of this State, or in the sum of sixty-one dollars and fifty cents (\$61.50) by a nonresident, plus fifty cents (50¢) for the issuing agent. (1975, c. 197, s. 8; c. 673, s. 2; 1979, c. 748, s. 4.)

Editor's Note. —

The 1979 amendment, effective Aug. 1, 1979, increased the fees in the last sentence from \$24.50 to \$30.50 and from \$49.50 to \$61.50. Session Laws 1979, c. 748, s. 9, provides, in part: "That in order to allow adequate time for printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on

Section Repealed Effective Aug. 1, 1980. —

This section is repealed, effective Aug. 1, 1980, by Session Laws 1979, c. 830, s. 1. Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

Aug. 1, 1979, are valid through Sept. 1, 1979."

Section Repealed Effective Aug. 1, 1980. —

This section is repealed, effective Aug. 1, 1980, by Session Laws 1979, c. 830, s. 1. Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

§ 113-96: Repealed by Session Laws 1979, ch. 830, s. 1, effective July 1, 1980 and Aug 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those

provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and

termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the

conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-96.1. Schedule of licenses. — The several hunting and trapping licenses required and authorized by G.S. 113-95, 113-95.2, 113-95.3, 113-95.5, 113-95.6 and 113-96 are summarized and tabulated as follows:

Nonresident hunting license	\$ 31.00
Nonresident six-day hunting license	25.00
Nonresident landowner's county hunting license	10.00
Resident State hunting license	9.50
Resident combination hunting and fishing license	12.50
Resident county hunting license	4.50
Controlled shooting preserve hunting license	10.00
Resident big-game hunting license	4.50
Nonresident big-game hunting license	18.50
Primitive weapons hunting license	6.00
Resident sportsman's combination license	31.00
Nonresident sportsman's combination license	62.00
Nonresident trapping license	60.00
Resident State trapping license	10.00
Resident county trapping license	5.00
Lifetime combination licenses:	
Resident fifty percent (50%) or more disabled veteran	7.50
Resident 65 years old	10.00
Resident 70 years old	(No Charge).

(1969, c. 1042, s. 8; 1975, c. 197, s. 12; c. 673, s. 3; 1977, c. 746, s. 2; 1979, c. 748, s. 5.)

Editor's Note. —

The 1979 amendment, effective Aug. 1, 1979, deleted "the preceding" preceding "G.S. 113-95" in the introductory paragraph and increased the fees for nonresident hunting licenses, nonresident six-day hunting licenses, resident State hunting licenses, resident combination hunting and fishing licenses, resident county hunting licenses, resident big-game hunting licenses, nonresident big-game hunting licenses, primitive weapons hunting licenses, resident sportsman's combination licenses, and nonresident sportsman's combination licenses. Session Laws 1979, c. 748, s. 9, provides, in part: "That in order to allow adequate time for the

printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on Aug. 1, 1979, are valid through Sept. 1, 1979."

Section Repealed Effective Aug. 1, 1980. — This section is repealed, effective Aug. 1, 1980, by Session Laws 1979, c. 830, s. 1. Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

§ 113-97: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter,"

immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 748, which amended §§ 113-95, 113-95.2, 113-95.5, 113-95.6 and 113-96.1, by increasing a number of license fees, provides, in s. 9, "That in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on Aug. 1, 1979, are valid through Sept. 1, 1979."

Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to

restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§§ 113-98 to 113-99: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

113-99.1. Voluntary contribution to hunters safety education program. — (a) A person applying for a hunting license may make a voluntary contribution of fifty cents (50¢) to the Wildlife Resources Commission for the purpose of funding a hunter safety education program.

(b) The Wildlife Resources Commission shall devise administrative procedure for the collection of all contributions donated pursuant to the provisions of this act and shall collect and use the contributions to fund and provide for a hunter safety education program. (1979, c. 764, ss. 1, 2.)

§ 113-100: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the

General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

The buying and selling of fox furs is legal in North Carolina, during open season for foxes in the county where the sale takes place. In short, if there is open season to hunt foxes then it is lawful to buy and sell fox furs. There is no requirement in the Game Law that a permit be issued for such transactions. *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

No Statewide Open Season on Foxes. — Since this section leaves open season for foxes to county regulations, there is no period which is necessarily open season for foxes statewide. *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

County Regulations Determine Legality of Sale of Fox Furs. — Construing this section and § 113-103 together, county regulations will determine when the buying and selling of fox furs is legal. *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

Applied in *State v. Cole*, 294 N.C. 304, 240 S.E.2d 355 (1978).

§ 113-101: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-102: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent

licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Cited in State v. Cole, 294 N.C. 304, 240 S.E.2d 355 (1978); Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

§ 113-103: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in

Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

This Section Applies to Fox Furs. — This section makes it unlawful to possess, transport, purchase or sell any dead game animals or parts thereof during the closed season in North Carolina. As the fox is by statutory definition a game animal, this section clearly applies to the buying and selling of fox furs. Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

The buying and selling of fox furs is legal in North Carolina, during open season for foxes in the county where the sale takes place. In short, if there is open season to hunt foxes then it is lawful to buy and sell fox furs. There is no requirement in the Game Law that a permit be issued for such transactions. Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

County Regulations Determine Legality of Sale of Fox Furs. — Construing § 113-100 and this section together, county regulations will determine when the buying and selling of fox furs is legal. Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

Applied in State v. Cole, 294 N.C. 304, 240 S.E.2d 355 (1978).

§ 113-103.1: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-104: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchline "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. —

The 1977, 2nd Sess., amendment added the third sentence in the first paragraph. The title of the amendatory act is: "An Act to Allow Hunting of Foxes at Night in Certain Counties." The sentence added by the amendment purports to authorize such hunting "at any time day or night."

Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent

licenses and permits outstanding upon the effective date of this act."

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For repeal sections and local acts continued in effect as to particular counties, see § 113-133.1.

The buying and selling of fox furs is legal in North Carolina, during open season for foxes in the county where the sale takes place. In short, if there is open season to hunt foxes then it is lawful to buy and sell fox furs. There is no requirement in the Game Law that a permit be issued for such transactions. *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

Cited in *State v. Cole*, 294 N.C. 304, 240 S.E.2d 355 (1978).

§§ 113-105 to 113-105.3: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-106: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Application of Term "Mounted". — The word "mounted" in the last sentence of this section applies to both heads and antlers, hides and feet of game animals. *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

§§ 113-107, 113-108: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act

generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to

the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and

private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-109: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. —

The 1977, 2nd Sess., amendment added the second sentence of subsection (g).

Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, any continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

§§ 113-109.6 to 113-109.8: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date

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themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 8.

Fox-Hunting Regulations.

§ 113-110.1: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-111: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Cited in *Barbour Fur Co. v. North Carolina Wildlife Resources Comm'n*, 40 N.C. App. 609, 253 S.E.2d 323 (1979).

§ 113-112: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 9.

Federal Regulations on Federal Lands.

§ 113-113: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 9A.

Regulation of Trapping.

§§ 113-113.6 to 113-113.14: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 9B.

Regulation of Beaver Taking.

§§ 113-113.20 to 113-113.23: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 10.

Regulation of Fur Dealers; Licenses.

§§ 113-114 to 113-120: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§§ 113-120.1 to 113-120.4: Transferred to §§ 14-159.6 to 14-159.9 by Session Laws 1979, c. 830, s. 11, effective July 1, 1980.

ARTICLE 10B.

Liability of Landowners to Authorized Users.

§ 113-120.5. **Liability of persons allowing others to use premises for certain purposes limited.** — Except as provided in G.S. 113-120.6, an owner, lessee, occupant or person in control of premises who gives permission to another to hunt, fish, trap, camp, hike, or for other recreational use or to collect, gather, cut or remove forest products upon such premises does not thereby extend any assurance that the premises are safe for such purpose, or that a duty of care is owed or that he assumes responsibility for or incurs liability for any injury to person or property caused by an act of persons to whom the permission is granted, nor to any person or persons who enter without permission: Provided, that nothing contained in this section or Article shall be construed as limiting or nullifying the doctrine of attractive nuisance as the same prevails in this jurisdiction. (1963, c. 298; 1979, c. 92, s. 1.)

Editor's Note. — The 1979 amendment inserted "or to collect, gather, cut or remove forest products" near the beginning of this section.

§ 113-120.6. What liability not affected. — This Article does not affect the liability which would otherwise exist for failure to guard, or to warn, against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, or for other recreational use or to collect, gather, cut, or remove forest products, was granted for a consideration other than the consideration, if any, paid to said landowner by the State or paid by other governmental unit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, or for other recreational use or to collect, gather, cut, or remove forest products was granted, or to other persons as to whom the person granting permission, or the owner, lessee, occupant, or person in control of the premises, owed a duty to keep the premises safe or to warn of danger. (1963, c. 298; 1979, c. 92, s. 2.)

Editor's Note. — The 1979 amendment inserted "or to collect, gather, cut or remove forest products" in two places near the middle of this section.

§ 113-120.7: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may

administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 11.

Miscellaneous Provisions.

§§ 113-121 to 113-126.1: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year

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and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts.”

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-126.2. Use of artificial lights in areas inhabited by game in certain counties. — (a) Any person who, between the hour of eleven o'clock p.m. on any day and one-half hour before sunrise on the following day, deliberately flashes or displays an artificial light from or attached to a motor-driven conveyance or from any means of conveyance attached to said motor-driven conveyance so as to cast the beam thereof beyond the surface of a roadway or in any field, woodland or forest in an area frequented or inhabited by wild game animals shall be guilty of a misdemeanor. Every person occupying such vehicle or conveyance at the time of such violation shall be deemed *prima facie* guilty of such violation as a principal.

(b) Each person violating the provisions of this section shall, on the first conviction thereof, be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00). Upon a second or subsequent conviction, such person shall be fine not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or imprisoned not more than 60 days, or both, in the discretion of the court.

(c) The provisions of this section shall not apply to a person while on land owned by him in fee simple or in which he has a life estate or a person who leases land for agricultural purposes, but the fact of such ownership shall be a matter of defense in any prosecution for violation of this section.

(d) All lawful peace officers of the county and State, including wildlife protectors, shall have authority to arrest for violations of this section.

(e) This section shall apply only to the counties of Gates, Guilford, Polk, Hertford, Johnston, Jones, Northampton, Rowan, Surry, Wayne and Lenoir. (1975, ch. 269; 1977, cc. 106, 167; 1979, cc. 441, 556.)

Editor's Note. — This section is codified from Session Laws 1975, c. 269, as amended by Session Laws 1977, cc. 106 and 167, and Session Laws 1979, cc. 441 and 556. Prior to the 1979 amendments, the 1975 act applied to fewer than ten counties, and was therefore classified as local, and not codified. As to repeal of local game laws effective July 1, 1980, except as expressly provided, see § 113-133.1.

Section Held Unconstitutional. — This section is so overbroad as to comprise an arbitrary interference with otherwise innocent

conduct, and lacks any rational, real, or substantial relation to the public health, morals, order, safety or general welfare. It does not meet the due process “standard of reasonableness” which acts as a limitation upon the exercise of the State’s police power, and it, therefore, violates the Fourteenth Amendment to the Constitution of the United States and Section 19 of Article I of the Constitution of North Carolina. *State v. Stewart*, 40 N.C. App. 693, 253 S.E.2d 638 (1979).

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Revision of Subchapter. — Articles 12, 13, 20, 21, 22 and 23 of this Subchapter were extensively amended and Article 22A was added by Session Laws 1979, c. 830, s.1, effective, with certain exceptions, July 1, 1980. As required by Session Laws 1979, c. 830, s. 16, Articles which were in any way changed by that act have been

set out in full in this Supplement, including those sections not changed. Where no section in an Article was affected by c. 830, the Article has not been set out, except to the extent that that Article was amended by 1979 acts other than c. 830.

Session Laws 1979, c. 830, repealed Article 6 of this Chapter, "Fishing Generally," Subchapter II-A "Distribution and Sale of Hunting, Fishing and Trapping Licenses," comprising Article 6 of this Chapter, and Subchapter III, "Game Laws," comprising Articles 6B through 11. Provisions similar to or covering the subject matter of many of the repealed sections were added by c. 830 in this Subchapter. Where appropriate, the historical citations to the repealed sections have been added to new or amended sections containing similar provisions.

Session Laws 1979, c. 830, is made effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective Aug. 1, 1980; falconry provisions and § 113-291.1, subsection (e1), are effective July 1, 1979. In addition, it has been necessary to include in the revised Articles certain 1979 amendments effective before July 1, 1980. They are:

§ 113-128, subdivisions (1) and (5), as amended by Session Laws 1979, c. 388, effective April 18, 1979.

§ 113-271, subsection (d), as amended by Session Laws 1979, c. 748, s. 6, effective Aug. 1, 1979, and Jan. 1, 1980;

§ 113-271, subsection (e), as added by Session Laws 1979, c. 737, effective Jan. 1, 1980;

§ 113-272, subsection (d), as amended by Session Laws 1979, c. 748, s. 7, effective Jan. 1, 1980;

§ 113-272.1, as amended by Session Laws 1979, c. 748, s. 8, effective Jan. 1, 1980.

Session Laws 1979, c. 830, s. 17, provides:

"Sec. 17. The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act. The Wildlife Resources Commission is empowered to promulgate regulations and take administrative actions to implement the provisions of this act as may be necessary prior to the effective dates set out in this section. Immediately upon ratification the commission may expend funds available to it to initiate the studies of fox and fur-bearer populations mandated by G.S. 113-291.4(e). The falconry provisions of this act and G.S. 113-291.1(e1) take effect July 1, 1979."

ARTICLE 12.

General Definitions.

(Effective July 1, 1980, unless otherwise indicated.)

§ 113-127. Application of Article. — Unless the context clearly requires otherwise, the definitions in this Article apply throughout this Subchapter. (1965, c. 957, s. 2.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective Aug. 1, 1980; falconry provisions and

subsection (e1) of § 113-291.1 are effective July 1, 1979. Section 113-128 as set out in this Article includes an amendment in Session Laws 1979, c. 388, effective April 18, 1979. For a more detailed consideration of 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-128. Definitions relating to agencies and their powers. — The following definitions and their cognates apply to powers and administration of agencies charged with the conservation of marine and estuarine and wildlife resources:

(1) **Marine Fisheries Inspector.** — An employee of the Department of Natural Resources and Community Development sworn in as an officer

Effective July 1, 1980, unless otherwise indicated.

and assigned the duties which include exercise of law-enforcement power. All references in statutes, regulations, contracts, and other legal and official documents to commercial fisheries inspectors apply to marine fisheries inspectors.

- (2) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (3) Department. — The Department of Natural Resources and Community Development. References to the Department include, when appropriate, the Marine Fisheries Commission.
- (4) Executive Director. — Executive Director, North Carolina Wildlife Resources Commission.
- (5) Inspector. — Marine fisheries inspector.
- (5a) Marine Fisheries Commission. — The Marine Fisheries Commission of the Department as established by Part 5 of Article 7 of Chapter 143B of the General Statutes.
- (5b) Marine Fisheries Inspector. — An employee of the Department, other than a wildlife protector, sworn in as an officer and assigned duties which include exercise of law enforcement powers under this Subchapter. All references in statutes, regulations, contracts, and other legal and official documents to commercial fisheries inspectors and to commercial and sports fisheries inspectors apply to marine fisheries inspectors.
- (6) Notice; Notify. — Where it is required that notice be given an agency of a situation within a given number of days, this places the burden on the person giving notice to make sure that the information is received in writing by a responsible member of the agency within the time limit.
- (7) Protector. — Wildlife protector.
- (8) Secretary. — Secretary of Natural Resources and Community Development.
- (9) Wildlife Protector. — An employee of the North Carolina Wildlife Resources Commission sworn in as an officer and assigned to duties which include exercise of law-enforcement powers.
- (10) Wildlife Resources Commission. — The North Carolina Wildlife Resources Commission as established by Article 24 of Chapter 143 of the General Statutes and Part 3 of Article 7 of Chapter 143B of the General Statutes. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1977, c. 512, s. 5; c. 771, s. 4; 1979, c. 388, s. 1; c. 830, s. 1.)

Editor's Note. —

Session Laws 1979, c. 388, s. 1, effective April 18, 1979, substituted "Marine" for "Commercial and Sports" in the heading of subdivision (1), substituted "marine" for "commercial and sports" near the end of the second sentence of

subdivision (1), and substituted "Marine" for "Commercial and sports" in subdivision (5).

Amendment Effective July 1, 1980. —

Session Laws 1979, c. 830, s. 1, effective July 1, 1980, will repeal subdivision (1) of this section.

§ 113-129. Definitions relating to resources. — The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

- (1) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (1a) Animals. — Wild animals, except when the context clearly indicates a contrary interpretation.
- (1b) Big Game. — Deer, bear, wild boar, and wild turkey.
- (1c) Birds. — Wild birds, except when the context clearly indicates a contrary interpretation.
- (1d) Boating and Fishing Access Area. — An area of land providing access to public waters owned, leased, controlled, or managed by the Wildlife Resources Commission.

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- (1e) Bushel. — A dry measure containing 2,150.42 cubic inches.
- (2) Coastal Fisheries. — Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Wildlife Resources Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.
- (3) Coastal Fishing. — All fishing in coastal fishing waters. Except as provisions in this Subchapter or in regulations of the Department of Natural Resources and Community Development authorized under this Subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.
- (4) Coastal Fishing Waters. — The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. Except as provisions in this Subchapter or changes in the agreement between the Marine Fisheries Commission and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.
- (5) Crustaceans. — Crustacea, specifically including crabs, lobster, and shrimp.
- (6) Fisheries Resources. — Marine and estuarine resources and such wildlife resources as relate to fish.
- (7) Fish; Fishes. — All marine mammals; all shellfish; all crustaceans; and all other fishes.
- (7a) Fur-bearing Animals. — Beaver, mink, muskrat, nutria, otter, skunk, and weasel; bobcat, opossum, and raccoon when lawfully taken with traps.
- (7b) Game. — Game animals and game birds.
- (7c) Game Animals. — Bear, deer, fox, rabbit, squirrel, and wild boar; bobcat, opossum, and raccoon except when trapped in accordance with provisions relating to fur-bearing animals.
- (7d) Game Birds. — Migratory game birds and upland game birds.
- (8) Game Fish. — Inland game fish and such other game fish in coastal fishing waters as may be regulated by the Department.
- (8a) Game Lands. — Lands owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission for public hunting, trapping, or fishing.
- (9) Inland Fishing Waters. — All inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland or upstream from:
 - a. The dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission; or
 - b. North Carolina's boundary with another state.

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- (10) Inland Game Fish. — Those species of freshwater fish, wherever found, and migratory saltwater fish, when found in inland fishing waters, as to which there is an important element of sport in taking and which are denominated as game fish in the regulations of the Wildlife Resources Commission. No species of fish of commercial importance not classified as a game fish in commercial fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the Department.
- (10a) Joint Fishing Waters. — Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission in accordance with G.S. 113-132(e).
- (11) Marine and Estuarine Resources. — All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.
- (11a) Migratory Birds. — All birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds and the Migratory Bird Treaty Act, as defined and listed in Part 10 of Title 50 of the Code of Federal Regulations.
- (11b) Migratory Game Birds. — Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging to the following families:
a. Anatidae (wild ducks, geese, brant, and swans);
b. Columbidae (wild doves and pigeons);
c. Gruidae (little brown cranes);
d. Rallidae (rails, coots, and gallinules); and
e. Scolopacidae (woodcock and snipe).
The Wildlife Resources Commission is authorized to modify this definition from time to time by regulations only as necessary to keep it in conformity with governing federal laws and regulations pertaining to migratory game birds.
- (11c) Nongame Animals. — All wild animals except game and fur-bearing animals.
- (11d) Nongame Birds. — All wild birds except game birds.
- (12) Nongame Fish. — All fish found in inland fishing waters other than inland game fish.
- (13) Private Pond. — A body of water arising within and lying wholly upon a single tract of privately owned land, from which fish cannot escape and into which fish cannot enter from public fishing waters at any time, except that all publicly owned ponds and lakes are classified as public fishing waters. In addition, the private owners of abutting tracts of land on which a pond not exceeding 10 acres is or has been established may by written agreement cooperate to maintain that pond as a private pond if it otherwise meets the requirements of this definition. If a copy of the agreement has been filed with the Wildlife Resources Commission and the pond in fact meets the requirements of this definition, it attains the status of private pond either 60 days after the agreement has been filed or upon the Commission's approving it as private, whichever occurs first.
- (13a) Public Fishing Waters; Public Waters. — Coastal fishing waters, inland fishing waters, or both.
- (13b) Public Hunting Grounds. — Privately owned lands open to the public for hunting under the terms of a cooperative agreement between the owner and the Wildlife Resources Commission.

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- (13c) Raptor. — A migratory bird of prey authorized under federal law and regulations for the taking of quarry by falconry.
- (14) Shellfish. — Mollusca, specifically including oysters, clams, mussels, and scallops.
- (14a) [Reserved.]
- (14b) Upland Game Birds. — Grouse, pheasant, quail, and wild turkey.
- (15) Wild Animals. — Game animals; fur-bearing animals; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provisions of law or regulation administered by any other agency.
- (15a) Wild Birds. — Migratory game birds; upland game birds; and all undomesticated feathered vertebrates. The Wildlife Resources Commission may by regulation list specific birds or classes of birds excluded from the definition of wild birds based upon the need for protection or regulation in the interests of conservation of wildlife resources.
- (16) Wildlife. — Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity. Nothing in this definition is intended to abrogate the exclusive authority given the Department of Agriculture to regulate the production and sale of pen-raised quail for food purposes.
- (16a) Wildlife Refuge. — An area of land or waters owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission which is closed to the taking of some or all species of wildlife.
- (17) Wildlife Resources. — All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory saltwater fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or depending upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

§ 113-130. Definitions relating to activities of public. — The following definitions and their cognates apply to activities of the public in regard to marine and estuarine and wildlife resources:

Effective July 1, 1980, unless otherwise indicated.

- (1) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (1a) Falconry. — The sport of taking quarry by means of a trained raptor.
- (1b) Individual. — A human being.
- (1c) Landholder. — Any individual, resident or nonresident, owning land in this State or, when he is the one principally engaged in cultivating the land, leasing land in this State for agricultural purposes.
- (2) Owner; Ownership. — As for personal property, refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.
- (3) Person. — Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.
- (4) Resident. — In the case of:
 - a. Individuals. — One who at the time in question has resided in North Carolina for the preceding six months or has been domiciled in North Carolina for the preceding 60 days. When domicile in the State for a period of 60 days up to six months is the basis for establishing residence, the individual must sign a certificate on a form supplied by the Department or the Wildlife Resources Commission, as the case may be, stating the necessary facts and the intent to establish domicile here.
 - b. Corporations. — A corporation which is chartered under the laws of North Carolina and has its principal office within the State.
 - c. Partnerships. — A partnership in which all partners are residents of North Carolina and which has its principal office in the State.
 - d. Other Associations and Groups Fitting the Definition of Person. — An association or group principally composed of individual residents of North Carolina, with its principal office, if any, in the State, and organized for a purpose that contemplates more involvement or contact with this State than any other state.
 - e. Military Personnel and Their Dependents. — A member of the armed forces of the United States stationed at a military facility in North Carolina, his spouse, and any dependent under 18 years of age residing with him are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located.
- (4a) To Buy; Purchase. — Includes a purchase or exchange of property, or an offer or attempt to purchase or exchange, for money or any other valuable consideration.
- (5) To Fish. — To take fish.
- (5a) To Hunt. — To take wild animals or wild birds.
- (6) To Sell; Sale. — Includes a sale or exchange of property, or an offer or attempt to sell or exchange — for money or any other valuable consideration.
- (7) To Take. — All operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.
- (7a) To Trap. — To take wild animals or wild birds by trapping.
- (8) Vessel. — Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2; 1971, c. 705, s. 3; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

Effective July 1, 1980, unless otherwise indicated.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

ARTICLE 13.*Jurisdiction of Conservation Agencies.***(Effective July 1, 1980, unless otherwise indicated.)**

§ 113-131. Resources belong to public; stewardship of conservation agencies. — The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are

effective Aug. 1, 1980; falconry provisions and subsection (e) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-132. Jurisdiction of fisheries agencies. — (a) The Department has jurisdiction over the conservation of marine and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine resources.

(b) The Wildlife Resources Commission has jurisdiction over the conservation of wildlife resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of wildlife resources.

(c) Notwithstanding the provisions of this Article, this Subchapter does not give the Marine Fisheries Commission or the Wildlife Resources Commission jurisdiction over matters clearly within the jurisdiction vested in the Department of Agriculture, the North Carolina Pesticide Board, the Commission for Health Services, the Environmental Management Commission, or other division of the Department regulating air or water pollution.

(d) To the extent that the grant of jurisdiction to the Department and the Wildlife Resources Commission may overlap, the Department and the Wildlife Resources Commission are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the Department and the Wildlife Resources Commission are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the State. In the event the Department and the Wildlife Resources Commission cannot agree, the Governor is empowered to resolve the differences.

(e) Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission, may be denominated joint fishing waters. These waters are deemed coastal fishing waters from the standpoint of laws and regulations administered by the Department and are deemed inland fishing waters from the standpoint of laws and regulations administered by the Wildlife Resources Commission. The Marine Fisheries Commission and the Wildlife Resources Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and

Effective July 1, 1980, unless otherwise indicated.

other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters.

(f) The granting of jurisdiction in this section pertains to the power of agencies to enact regulations and ordinances. Nothing in this section or in G.S. 113-138 is designed to prohibit law-enforcement officers who would otherwise have jurisdiction from making arrests or in any manner enforcing the provisions of this Subchapter. (1965, c. 957, s. 2; 1973, c. 476, s. 128; c. 1262, ss. 18, 28, 38; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

§ 113-133. Abolition of local coastal fishing laws. — The enjoyment of the marine and estuarine resources of the State belongs to the people of the State as a whole and is not properly the subject of local regulation. As the Department is charged with administering the governing statutes and promulgating regulations in a manner to reconcile as equitably as may be the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and nonrenewable resources and also the interests of the many whose approach is recreational, all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of marine and estuarine resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. (1965, c. 957, s. 2.)

§ 113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained. — (a) The enjoyment of the wildlife resources of the State belongs to all of the people of the State.

(b) The Wildlife Resources Commission is charged with administering the governing statutes in a manner to serve as equitably as may be the various competing interests of the people regarding wildlife resources, considering the interests of those whose livelihood depends upon full and wise use of renewable resources and the interests of the many whose approach is recreational. Thus, except as provided in subsection (e), all special, local, and private acts and ordinances enacted prior to the ratification date of the act creating this section regulating the conservation of wildlife resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of wildlife resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. In particular, this section does not repeal local acts which restrict hunting primarily for the purpose of protecting travelers on the highway, landowners, or other persons who may be endangered or affected by hunters' weapons or ammunition or whose property may be damaged.

(c) This Subchapter is intended to express State policy relating to the conservation of wildlife resources. Nothing in this section is intended to repeal or prevent the enactment of any city or county ordinance otherwise validly authorized which has only a minor and incidental impact on the conservation of marine and estuarine and wildlife resources. This section does not repeal G.S. 153A-127, G.S. 153A-131, G.S. 160A-182, G.S. 160A-187, and G.S. 160A-188, nor any local act establishing bird sanctuaries, except that local authorities operating bird sanctuaries may not regulate the taking of game or otherwise abrogate valid laws and regulations pertaining to the conservation of wildlife resources.

Effective July 1, 1980, unless otherwise indicated.

(d) Nothing in this Subchapter is intended to repeal or abridge the regulatory authority of the Game Commission of Currituck County or the Dare County Game and Wildlife Commission.

(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 578.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173; Session Laws 1977, Chapter 90.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox seasons); Session Laws 1961, Chapter 348, (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1917, Chapter 658, Section 2; Public-Local Laws 1933, Chapter 308; Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441; Session Laws 1979, Chapter 582.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937, Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 146; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Currituck: Session Laws 1959, Chapter 545; Session Laws 1977, Chapter 494; Session Laws 1979, Chapter 582.

Dare: Session Laws 1973, Chapter 258; Session Laws 1973, Chapter 259; Session Laws 1979, Chapter 582.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

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- Edgecombe: Session Laws 1961, Chapter 408.
- Gates: Session Laws 1959, Chapter 298; Session Laws 1973, Chapter 124, amending Session Laws 1969, Chapter 121; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.
- Granville: Session Laws 1963, Chapter 670.
- Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.
- Halifax: Public-Local Laws 1929, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376; Session Laws 1959, Chapter 1304.
- Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.
- Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.
- Henderson: Former G.S. 113-111.
- Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.
- Hoke: Session Laws 1963, Chapter 267.
- Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932; Session Laws 1977, Chapter 412.
- Iredell: Session Laws 1979, Chapter 577.
- Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.
- Jones: Session Laws 1979, Chapter 441.
- Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.
- Lenoir: Session Laws 1979, Chapter 441.
- Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.
- Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.
- Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 568.
- Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.
- Montgomery: Session Laws 1955, Chapter 692; Session Laws 1977 (Second Session 1978), Chapter 1142.
- Moore: Session Laws 1955, Chapter 692.
- Nash: Session Laws 1961, Chapter 408.
- New Hanover: Public-Local Laws 1917, Chapter 673; Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.
- Northampton: Session Laws 1955, Chapter 1376; Session Laws 1959, Chapter 1304; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.
- Onslow: Public-Local Laws 1939, Chapter 606.
- Orange: Public-Local Laws 1913, Chapter 547.
- Pamlico: Session Laws 1977, Chapter 636.
- Pasquotank: Session Laws 1979, Chapter 582.
- Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.
- Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.
- Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167; Session Laws 1979, Chapter 146.
- Randolph: Public-Local Laws 1919, Chapter 76; Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.
- Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

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Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 578.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397; Session Laws 1979, Chapter 146.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1977, Chapter 434; Session Laws 1979, Chapter 578.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238, as modified by Session Laws 1949, Chapter 228; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685; Session Laws 1979, Chapter 582.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620; Session Laws 1979, Chapter 582.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522.

(f) The Wildlife Resources Commission is directed to review periodically all local acts affecting conservation of wildlife resources and notify local authorities and the General Assembly as to those that:

- (1) Substantially duplicate provisions of this Subchapter.
- (2) Seriously conflict with conservation policies set out in this Subchapter.
- (3) Seriously conflict with conservation policies developed for the people of this State as a whole by the Wildlife Resources Commission.

(g) Notwithstanding G.S. 113-133.1(b), Chapter 565 of the Session Laws of 1977 is retained in effect. The following local conservation acts which specify that they must be specifically repealed are so repealed: Chapters 434 and 441 of the Session Laws of 1977. To provide for their retention or repeal in accordance with provisions applying to all other local wildlife acts, the following acts are amended to repeal the cited sections: Section 11, chapter 258, Session Laws of 1969; and Section 4, Chapter 585, Session Laws of 1977. (1979, c. 830, ss. 1, 14.)

§ 113-134. Regulations. — The Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, are empowered to promulgate regulations implementing the provisions of this Chapter, within the limits of the jurisdiction granted in this Article. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., 1878, 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

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§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean. — The Department is directed to exercise all enforcement and regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers. (1973, c. 1315; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

§ 113-135. General penalties for violating Subchapter or regulation; increased penalty for prior convictions; interpretive provisions. — (a) Any person who violates any provision of this Subchapter or any regulation adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that punishment for violation of the regulations of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

- (1) For a first conviction, a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisonment not to exceed 30 days.
- (2) For a second or subsequent conviction within three years, a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(b) In interpreting this section, provisions elsewhere in this Subchapter making an offense a misdemeanor "punishable in the discretion of the court" must be considered to set a different level of punishment, to be interpreted in the light of G.S. 14-3 or any equivalent or successor statute. Noncriminal sanctions, however, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute different levels of punishment so as to oust criminal liability. Any previous conviction of an offense under this Subchapter, or under regulations authorized by it, serves to increase the punishment under subsection (a) even though for a different offense than the second or subsequent one.

(c) For the purposes of this Subchapter, violations of laws or regulations administered by the Wildlife Resources Commission under any former general or local law replaced by the present provisions of this Subchapter are deemed to be violations of laws or regulations under this Subchapter. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1979, c. 830, s. 1.)

§ 113-135.1. Limitation upon penalty for offense created by regulations of Wildlife Resources Commission in certain instances. — (a) To prevent unsuspecting members of the public from being subject to harsh criminal penalties for offenses created by regulations of the Wildlife Resources Commission, the penalty for an offense which is solely a violation of regulations of the Wildlife Resources Commission is limited to a fine of ten dollars (\$10.00) except that offenses set out in Section (b) are punished as set forth in G.S. 113-135 or other sections.

(b) The limitation upon penalty does not apply to any regulation violation:

- (1) Punishable under G.S. 113-294 or otherwise involving aggravating elements which result in a greater punishment than provided by G.S. 113-135;
- (2) Which involves a defendant subject to the collection-license provisions of G.S. 113-272.4 or who is a dealer as defined in G.S. 113-273; or
- (3) Relating to seasons, bag limits, creel limits, taking fish other than with hook and line, buying or selling wildlife, possessing or transporting live

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wildlife, taking wildlife at night or with the aid of a conveyance, or falconry. (1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors. — (a) Inspectors and protectors are granted the powers of peace officers anywhere in this State, and beyond its boundaries to the extent provided by law, in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part 5 of Article 7 of Chapter 143B of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Wildlife Resources Commission, whether set out in this Chapter, Chapter 75A, Chapter 143, Chapter 143B, or elsewhere. The Wildlife Resources Commission is specifically granted jurisdiction over all aspects of:

- (1) Boating and water safety;
- (2) Hunting and trapping;
- (3) Fishing, exclusive of fishing under the jurisdiction of the Marine Fisheries Commission; and
- (4) Activities in woodlands and on inland waters governed by G.S. 113-60.1 to G.S. 113-60.3.

In addition, protectors have jurisdiction over all offenses involving property of or leased by the Wildlife Resources Commission or occurring on wildlife refuges, game lands, or boating and fishing access areas managed by the Wildlife Resources Commission. The authority of protectors over offenses on public hunting grounds is governed by the jurisdiction granted the Commission in G.S. 113-264(c).

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of G.S. 15A-401(b) for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of the administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.

(e) Inspectors and protectors may serve arrest warrants, search warrants, orders for arrest, criminal summonses, subpoenas, and all other process connected with any cases within their subject-matter jurisdiction. In the exercise of their law enforcement powers, inspectors are subject to provisions relating to police officers in general set out in Chapter 15, Chapter 15A, and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

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(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting taxable seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, tax receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h), (i) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 30 days, or both.

(k) It is unlawful to refuse to exhibit upon request by any inspector, protector, or other law enforcement officer any item required to be carried by any law or regulation as to which inspectors or protectors have enforcement jurisdiction. The items that must be exhibited include boating safety or other equipment or any license, permit, tax receipt, certificate, or identification. It is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect weapons, equipment, fish, or wildlife that the officer reasonably believes to be possessed incident to an activity regulated by any law or regulation as to which inspectors and protectors have enforcement jurisdiction.

(l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28, 86; c. 1286, s. 17; c. 1297; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property. — (a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Secretary or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of employees of the Department or the Wildlife Resources Commission, as the case may be, the identity or whereabouts of the violator or of the owner of the property seized cannot be determined, such property may be sold by the Department or the

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Wildlife Resources Commission in accordance with the provisions of this section.

(d) The Marine Fisheries Commission and the Wildlife Resources Commission may provide by regulation for summary disposition of live or perishable fish or wildlife seized by an inspector or protector. If the property seized consists of live fish which may again be placed to the benefit of the public on public fishing bottoms or in public waters, the inspector or protector may require the person in possession of the seized live fish to transport it the distance necessary to effect placement on appropriate bottoms or waters. In the event of refusal by the person in question to transport the fish, the inspector or protector must take appropriate steps to effect the transportation. The steps may include seizure of any conveyance or vessel of the person refusing to transport the fish if the conveyance or vessel was one on which the fish were located or was used to take or transport the fish. When a conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it pending trial and it becomes subject to the orders of the court. Transportation costs borne by the department or by the Wildlife Resources Commission, as the case may be, may be collected by the agency from the proceeds of the sale of any other property of the defendant seized and sold in accordance with the provisions of this section.

Except as provided in subsection (g), when the seizure consists of edible fish or wildlife which is not alive, may not live, or may not otherwise benefit conservation objectives if again placed on open lands, on public fishing bottoms, or in public fishing waters, the inspector or protector must dispose of the property in a charitable or noncommercial manner in accordance with the directions of his administrative superiors.

(e) Except as otherwise specifically provided in this section, all property seized must be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a conviction the property seized in connection with the offense in question is subject to the disposition ordered by the court. Upon an acquittal, property seized must be returned to the defendant or established owner, except:

- (1) Where the property was summarily disposed of in accordance with subsection (d);
- (2) Where possession of the property by the person to whom it otherwise would be returned would constitute a crime; and
- (3) Where the property seized has been sold in accordance with subsection (g). In this event the net proceeds of the sale must be returned to the defendant or established owner, as the case may be.

Where property seized summarily under subsection (d) is not available for return, an acquitted defendant or established owner is entitled to no compensation where there was probable cause for the action taken.

In safeguarding property seized pending trial, an inspector or protector is authorized in his discretion, subject to orders of his administrative superiors, to make his own provisions for storage or safekeeping or to deposit the property with the sheriff of the county in which the trial is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected by the inspector or protector entails a storage or handling charge, such charge is to be paid as follows:

- (1) By the defendant if he is convicted but the court nevertheless orders the return of the property to the defendant;
- (2) From the proceeds of the sale of the property if the property is sold under court order or in accordance with the provisions of this section; or
- (3) By the Department or by the Wildlife Resources Commission, as the case may be, if no other provision for payment exists.

(f) Subject to orders of his administrative superiors, an inspector or protector in his discretion may leave property which he is authorized to seize in the possession of the defendant with the understanding that such property will be subject to the orders of the court upon disposition of the case. Willful failure or

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inexcusable neglect of the defendant to keep such property subject to the orders of the court is a misdemeanor punishable in the discretion of the court. In exercising his discretion, the inspector or protector should not permit property to be retained by the defendant if there is any substantial risk of its being used by the defendant in further unlawful activity.

(g) Where a prosecution involving seized saleable fish is pending and such fish are perishable or seasonal, the inspector or protector may apply to the court in which the trial is pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are those which command a higher price at one season than at another so that economic loss may occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial must be conducted in accordance with the order of the court or in accordance with the provisions of this section. The net proceeds of such sale are to be deposited with the court and are subject to the same disposition as would have been applicable to other types of property seized. Where sale is not lawful or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(h) Pending trial, the defendant or the established owner of any nonperishable and nonconsumable property seized may apply to the court designated to try the offense for return of the property. The property must be returned pending trial if:

- (1) The court is satisfied that return of the property will not facilitate further violations of the law; and
- (2) The claimant posts a bond for return of the property at trial in an amount double the value of the property as assessed by the court.

(i) Upon conviction of any defendant for a violation of the laws or regulations administered by the Department or the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may order the confiscation of all weapons, equipment, vessels, conveyances, fish, wildlife, and other evidence, fruits, and instrumentalities of the offense in question, whether or not seized or made subject to the orders of the court pending trial. If the confiscated property is lawfully saleable, it must be sold; otherwise it must be disposed of in a manner authorized in this section. Unless otherwise specified in the order of the court, sales are to be held by the Department or the Wildlife Resources Commission, as the case may be.

The Department and the Wildlife Resources Commission may administratively provide for an orderly public sale procedure of property which it may sell under this section. The procedure may include turning the property to be sold over to some other agency for sale, provided that the provisions of subsection (j) are complied with and there is proper accounting for the net proceeds of the sale. In the case of property that cannot lawfully be sold or is unlikely to sell for a sufficient amount to offset the costs of sale, the Department and the Wildlife Resources Commission may provide either for destruction of the property or legitimate utilization of the property by some public agency.

(j) Except as provided in subsection (d), if property is seized under subsection (c) or it appears that a person not a defendant has an interest in any property to be sold, destroyed, or otherwise disposed of, the Department and the Wildlife Resources Commission must provide for public notice of the description of the property and the circumstances of its seizure for a sufficient period prior to the time set for sale or other disposition to allow innocent owners or lienholders to assert their claims. The validity of claims are to be determined by the trial court in the event there is or has been a prosecution in connection with the seizure of the property. If there has been no prosecution and none is pending, the validity of claims must be determined by the Secretary or by the Executive Director, as the case may be. When there has been a sale under subsection (g), the provisions of this subsection apply to the net proceeds of the sale.

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(k) Except as provided in subsection (j) and in subdivision (3) of the first paragraph of subsection (e), the net proceeds of all sales made pursuant to this section must be deposited in the school fund of the county in which the property was seized. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1953, c. 1134; 1957, c. 1423, s. 2; 1961, c. 1189, s. 4; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1979, c. 830, s. 1.)

§ 113-138. Enforcement jurisdiction of special officers. — The Marine Fisheries Commission and the Wildlife Resources Commission by regulation may confer law-enforcement powers over matters within their jurisdiction upon the employees of any local, State, or federal public agency who possess special law-enforcement jurisdiction that would not otherwise extend to the subject matter of this Subchapter. The Department of Natural Resources and Community Development and Wildlife Resources Commission may confer such powers or not to any particular officers or class of officers as may be convenient or desirable in the interests of conservation of marine and estuarine and wildlife resources. Such conferring of powers does not constitute the appointment of any such special enforcement officer to an additional office and no oath need be taken. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4.)

§ 113-139: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§§ 113-140 to 113-150: Reserved for future codification purposes.

ARTICLE 14.***Commercial and Sports Fisheries
Licenses and Taxes.***

§ 113-155.1. Commercial fisherman; identification. — The receipt of a current and valid commercial fishing license issued by the Department shall serve as proper identification of the licensee as a commercial fisherman. (1973, c. 708, s. 2; 1977, c. 771, s. 4; 1979, c. 388, s. 2.)

Editor's Note. —

The 1979 amendment, effective April 18, 1979, rewrote this section.

§ 113-161. Nonresidents reciprocal agreements. — Persons who are not residents of North Carolina are not entitled to obtain licenses under the provisions of G.S. 113-152 except as hereinafter provided. Residents of jurisdictions which sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-152. Such licenses may be restricted in terms of area, gear and fishery by the commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of such other jurisdiction. The secretary may enter into such reciprocal agreements with other jurisdictions as are necessary to allow nonresidents to obtain commercial fishing licenses in North Carolina subject to the foregoing provisions. (1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86; 1977, 2nd Sess., c. 1183.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective June 16, 1978, rewrote this section.

§ 113-162. Fraud or deception as to licenses, taxes or records. — (a) It is unlawful to falsify, or to practice any fraud or deception designed to evade the provisions of this Article or of regulations made under the authority of this Article in connection with:

- (1) Any licenses authorized in this Article;
- (2) Any tax receipts or other evidence that the tax has been assessed on seafood or that the seafood is not subject to tax; or
- (3) Any records required to be kept under the provisions of this Article or of regulations made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (1965, c. 957, s. 2; 1979, c. 388, s. 3.)

Editor's Note. — The 1979 amendment, effective April 18, 1979, designated the former section as subsection (a) and added subsection (b).

§ 113-163. Record-keeping requirements.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts and reports which licensees are required by the Department to make, keep and exhibit pursuant to the provisions of this section, and all records, accounts and memoranda compiled by the Department from records, accounts and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues and profits; the number, capacity, capability and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other

seafood. The Department may compile statistical information in any aggregate or summary form which does not directly or indirectly disclose the identity of any licensee-source of the information, and any compilation of such statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department. (1953, c. 1134; 1961, c. 1189, s. 3; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1979, c. 388, s. 4.)

Editor's Note. — The 1979 amendment, effective April 18, 1979, added subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-187. Penalties for violations of Article and regulations.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules and regulations of the Department of Natural Resources and Community Development; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules and regulations, shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00) for the first offense and not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for any offense thereafter, or imprisonment for not more than 30 days, or both. The violations of the statute or the rules and regulations for which this penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters or clams taken from areas closed by statute, regulation, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net between January 1 and the date upon which the shrimping season shall be opened by the Secretary.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or regulation for the protection of the shrimp population or juveniles of any other species of major economic importance.
- (4) Violating the provisions of a special permit issued by the Department.
- (5) Using or attempting to use any trawl net or dredge in designated primary nursery areas. (1965, c. 957, s. 2; 1973, c. 1102; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1979, c. 388, s. 5.)

Editor's Note.

The 1979 amendment, effective April 18, 1979, added "or juveniles of any other species of major economic importance" at the end of subdivision (3) of subsection (d), and added subdivision (5) to subsection (d).

As only subsection (d) was changed by the amendment, the other subsections are not set out.

ARTICLE 16.

*Cultivation of Oysters and Clams.***§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.****Editor's Note. —**

For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 113-208. Protection of oyster and clam leases. — (a) Any person, other than the lessee, who takes or attempts to take oysters or clams from any privately leased or owned oyster or clam bottom area without written authorization of the lessee is guilty of a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), imprisonment for not more than 30 days, or both. The written authorization shall include the lease number, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the lessee.

(b) The prosecutor shall dismiss any case brought for a violation of this section if the defendant produces a notarized written authorization in conformance with subsection (a) which states that the defendant had permission to take oysters or clams from the leased area at the time of the alleged violation; except the prosecutor may refuse to dismiss the case if he has reason to believe that the written authorization is fraudulent. (1979, c. 537.)

Editor's Note. — This section is effective May 9, 1979.

ARTICLE 17.

*Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.***§ 113-221. Filing, codification and publication of regulations; effective date of regulations; proclamations suspending or implementing regulations; presumption of publication; judicial notice of codifications; Secretary's certificates as evidence.**

(e) The Marine Fisheries Commission may delegate to the Secretary the authority to issue proclamations suspending or implementing, in whole or in part, particular regulations of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Secretary or by a person designated by the Secretary. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized

regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Secretary or the person designated by the Secretary to issue proclamations. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding. Article 2 and Article 5 of Chapter 150A of the General Statutes are not applicable to proclamations issued in accordance with this section and proclamations need not be filed with any clerks of superior court.

The Department must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Such effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Department, and such other measures designed to reach the persons who may be affected.

(1979, c. 388, s. 6.)

Editor's Note. —

The 1979 amendment, effective April 18, 1979, substituted "to issue proclamations suspending or implementing" for "by proclamations to suspend or implement" and deleted "Marine Fisheries" before "commission" near the middle of the first sentence of subsection (e), added "or

by a person designated by the Secretary" to the end of the second sentence of subsection (e), and added the fourth through ninth sentences to subsection (e).

As only subsection (e) was changed by the amendment, the other subsections are not set out.

§ 113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department of Natural Resources and Community Development among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall have the authority to adopt, modify and revoke official regulations interpreting and applying the provisions of this section and rules of procedure consolidating the permit required by G.S. 113A-118 (the Coastal Area Management Act) so as to eliminate all unnecessary duplication and create a single, expedited permit process. Maintenance work as defined in this subsection shall be limited such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act upon an application for permit within 90 days after the application is filed except for applications for a special emergency permit in which case the Department shall act within two

working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary of the Department of Natural Resources and Community Development is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may, after public hearings, elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) If any State agency or the applicant raises an objection to the action of the Department of Natural Resources and Community Development regarding the permit application within 20 days after said action was taken, the Department shall refer the matter to the Coastal Resources Commission. The Coastal Resources Commission shall hear the matter at its next regularly scheduled meeting, but in no case more than 90 days from the date of the departmental action. At said hearing, evidence shall be taken by the review commission from all interested persons, who shall have a right to be represented by counsel. After hearing the evidence, the review commission shall make findings of fact in writing and shall affirm, modify or overrule the action of the Department concerning the permit application. Any State agency or the applicant may appeal from the ruling of the review commission to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Chapter 150A of the General Statutes.

(1979, c. 253, ss. 1, 2.)

Editor's Note. —

The 1979 amendment, effective April 2, 1979, substituted "Coastal Resources Commission" for "Marine Fisheries Commission" throughout subsections (e), (e1) and (f); and substituted the present seventh sentence of subsection (e) for one which read "The Marine Fisheries Commission shall by rule, after at least two

public hearings, enumerate such conditions as it deems necessary to carry out the purposes of this subsection."

As only subsections (e), (e1) and (f) were changed by the amendment, the rest of the section is not set out.

For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 113-230. Orders to control activities in coastal wetlands. — (a) The Secretary of Natural Resources and Community Development, with the approval of the Coastal Resources Commission, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term "coastal wetlands" shall mean any marsh as defined in G.S. 113-229(n)(3), as amended, and such contiguous land as the Secretary reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Coastal Resources Commission, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(1979, c. 253, s. 4.)

Editor's Notes. —

The 1979 amendment, effective April 2, 1979, substituted "Coastal Resources Commission" for "Marine Fisheries Commission" near the beginning of the first sentence of subsection (a) and near the middle of subsection (g).

As only subsections (a) and (g) were changed by the amendment, the rest of the section is not set out.

For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

ARTICLE 20.

Miscellaneous Regulatory Provisions.

(Effective July 1, 1980, unless otherwise indicated.)

§ 113-261. Taking fish and wildlife for scientific purposes; permits to take in normally unauthorized manner; cultural and scientific operations. — (a) The Department, the Wildlife Resources Commission, and agencies of the United States with jurisdiction over fish and wildlife are hereby granted the right to take marine, estuarine, and wildlife resources within the State, to conduct fish cultural operations and scientific investigations in the several waters of North Carolina, to survey fish and wildlife populations in the State, to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife, to propagate animals, birds, and fish, and to erect fish hatcheries and fish propagating plants without regard to any licensing or permit requirements of this Subchapter.

(b) The Department with respect to fish in coastal fishing waters and the Wildlife Resources Commission with respect to wildlife may provide for the issuance of permits, on such terms as they deem just and in the best interest of conservation, authorizing persons to take such fish or wildlife through the use of drugs, poisons, explosives, electricity, or any other generally prohibited manner. Such permits need not be restricted solely to victims of depredations or to scientific or educational institutions, but should be issued only for good cause. No permit to take wildlife other than fish by means of poison may be issued, however, unless the provisions of Article 22A are met.

(c) The Department, the Wildlife Resources Commission, and agencies of the United States with jurisdiction over fish and wildlife may, as necessary in their legitimate operations, take fish and wildlife in a manner generally prohibited by this Subchapter or by regulations made under the authority of this Subchapter. (1915, c. 84, s. 7; C. S., s. 1886; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are

effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Effective July 1, 1980, unless otherwise indicated.

§ 113-262. Taking fish or wildlife by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish or wildlife prohibited. — (a) Except as otherwise provided in this Subchapter, or in regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both to take any fish or wildlife through the use of poisons, drugs, explosives, or electricity. This subsection does not apply to any person lawfully using any poison or pesticide under the Structural Pest Control Act of North Carolina of 1955, as amended, or the North Carolina Pesticide Law of 1971, as amended.

(b) Except under a valid permit it is unlawful to possess any fish or wildlife:

- (1) Bearing evidence of having been taken in violation of subsection (a); or
- (2) With knowledge or reason to believe that the fish or wildlife was taken in violation of subsection (a). (1883, c. 290; Code, s. 1094; Rev., s. 3417; C.S., ss. 1968, 2124; 1927, c. 107; 1935, c. 486, ss. 18-20; 1939, c. 235, s. 1; 1949, c. 1205, ss. 2, 3; 1953, c. 1134; 1955, c. 104; c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1959, c. 207; c. 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1965, c. 904, s. 1; c. 957, s. 2; 1967, c. 728, s. 1; c. 858, s. 1; c. 1149, s. 1.5; 1969, c. 75; c. 140; 1971, c. 439, ss. 1-3; c. 449, s. 1; c. 461; c. 648, s. 1; c. 899, s. 1; 1973, c. 1096; c. 1210, ss. 1-3, 5; c. 1262, s. 18; 1975, c. 669; c. 728; 1977, c. 493; c. 794, s. 4; 1979, c. 830, s. 1.)

§ 113-263. Inspecting plans and specifications of dams. — The Department and the Wildlife Resources Commission, in addition to other agencies primarily responsible, may inspect the plans and specifications of all dams proposed to be built, in North Carolina or elsewhere within the United States, the design or proposed mode of construction of which may have an adverse effect upon fish within the State. The Department or the Wildlife Resources Commission, as the case may be, may be heard before the appropriate agency charged with approving said plans and specifications, and due consideration shall be given to said Department or Wildlife Resources Commission in the approval or disapproval of the plans and specifications of proposed dams by the agencies so charged with said duty. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-264. Regulatory power over property of agency; public hunting grounds. — (a) The Department and the Wildlife Resources Commission are granted the power by regulation to license, regulate, prohibit, or restrict the public as to use and enjoyment of, or harm to, any property of the Department or the Wildlife Resources Commission, and may charge the public reasonable fees for access to or use of such property. "Property" as the word is used in this section is intended to be broadly interpreted and includes lands, buildings, vessels, vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs and artificial constructions in boating and fishing access areas, game lands, wildlife refuges, public waters, public mountain trout waters, and all other real and personal property owned, leased, controlled, or cooperatively managed by either the Department or the Wildlife Resources Commission.

(b) Willful removal of, damage to, or destruction of any property of the Department or the Wildlife Resources Commission is a misdemeanor punishable in the discretion of the court.

(c) The Wildlife Resources Commission may cooperate with private landowners in the establishment of public hunting grounds. It may provide for the posting of these areas and of restricted zones within them, require that authorized hunters obtain written permission from the owner to hunt, enforce general laws concerning trespass by hunters and concerning damage or injurious activities by hunters and by others carrying weapons on or discharging

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weapons across public hunting grounds or restricted zones. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

§ 113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc. — (a) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Environmental Management Commission.

(b) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Marine Fisheries Commission and the Wildlife Resources Commission may by regulation impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(c) It is unlawful for any person without the authority of the owner of the equipment to take any fish from nets, traps, and other devices to catch fish which have been placed in the open waters of the State. Violation of this subsection is a misdemeanor punishable in the discretion of the court.

(d) Any master or other person having the management or control of a vessel in the navigable waters of the State who willfully, wantonly, and unnecessarily does injury to any seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish is guilty of a misdemeanor punishable in the discretion of the court.

(e) Any person who willfully destroys or injures any buoys, markers, stakes, nets, or other devices or property lawfully set out in the open waters of the State in connection with any fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C. S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2; 1971, c. 690, s. 4; 1973, c. 1262, ss. 18, 28.)

§ 113-266: Reserved for future codification purposes.

§ 113-267. Replacement costs of marine, estuarine, and wildlife resources; regulations authorized; prima facie evidence. — To provide information to the courts and other officials taking action under G.S. 15A-1343(b)(16b), under G.S. 143-215.3(a)(7), or under any other pertinent authority of law, the Marine Fisheries Commission and the Wildlife Resources Commission are authorized to adopt regulations setting forth the factors that should be considered in determining the replacement costs of fish and wildlife and other marine, estuarine, and wildlife resources that have been taken, injured, removed, harmfully altered, damaged, or destroyed. The Marine Fisheries Commission and the Wildlife Resources Commission may make similar regulations respecting costs of investigations required by G.S. 143-215.3(a)(7) or which are made pursuant to a court order. For common offenses resulting in the destruction of marine, estuarine, and wildlife resources the Marine Fisheries Commission and the Wildlife Resources Commission may adopt schedules of costs which reasonably state the likely replacement costs and necessary investigative costs when appropriate. Regulations of the Marine Fisheries Commission and the Wildlife Resources Commission stating scheduled costs or cost factors must be treated as prima facie evidence of the actual costs, but do not prevent a court or jury from examining the reasonableness of the regulations or from assessing the special factors in a case which may make the true costs either higher or lower than the amount stated in the regulations. The term "replacement costs" must be broadly construed to include indirect costs of replacement through habitat improvement or restoration, establishment of sanctuaries, and other recognized conservation techniques when direct stocking or replacement is not feasible. (1979, c. 830, s. 1.)

Effective July 1, 1980, unless otherwise indicated.

§§ 113-268 to 113-270: Reserved for future codification purposes.

ARTICLE 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

(Effective July 1, 1980, unless otherwise indicated.)

§ 113-270.1. **License agents.** — (a) The Wildlife Resources Commission may by regulation provide for the annual appointment of persons as license agents to sell licenses which it is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses containing special restrictions, the Wildlife Resources Commission may issue licenses in any particular category through:

- (1) License agents.
- (2) The Wildlife Resources Commission's headquarters.
- (3) Employees of the Wildlife Resources Commission.
- (4) Two or more such sources simultaneously.

When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license a fee of:

- (1) Twenty-five cents (25¢) for selling licenses that cost less than five dollars (\$5.00).
- (2) Fifty cents (50¢) for selling licenses that cost five dollars (\$5.00) or more but less than twenty-five dollars (\$25.00).
- (3) One dollar (\$1.00) for selling licenses that cost twenty-five dollars (\$25.00) or more.

(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, pay penalties up to ten percent (10%) upon receipts as to which there is serious delay in remittance, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars (\$5.00), and the maximum penalty is two hundred dollars (\$200.00).

(d) The Wildlife Resources Commission may make regulations in implementing the authority granted in subsection (c), but it need not set out in its regulations details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required. It is a misdemeanor punishable in the discretion of the court for a license agent:

- (1) To withhold or misappropriate funds from the sale of licenses;
- (2) To falsify records of licenses sold;
- (3) Wilfully and knowingly to assist or allow a person to obtain a license for which he is ineligible;

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- (4) Wilfully to issue a backdated license;
- (5) Wilfully on records or licenses to include false information or omit material information as to:
 - a. A person's entitlement to a particular license; or
 - b. The applicability or term of a particular license; or
- (6) To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.
- (e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.
- (f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.
- (g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.
- (h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits

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required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.

(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, regulations, and reasonable administrative directives pertaining to license agents.

(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act. (1961, c. 352, ss. 4, 9; 1979, c. 830, s. 1.)

Revision of Article. — With the exceptions listed below, this Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. Session Laws 1979, c. 830, is made effective generally July 1, 1980; provisions as to annual licenses that expire July 31 are effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979.

Included in this Article are the following sections and parts of sections amended or added by 1979 acts other than c. 830, with different effective dates:

§ 113-271, subsection (d), as amended by Session Laws 1979, c. 748, s. 6, effective Aug. 1, 1979, and Jan. 1, 1980;

§ 113-271, subsection (e), as added by Session Laws 1979, c. 737, effective Jan. 1, 1980;

§ 113-272, subsection (d), as amended by Session Laws 1979, c. 748, s. 7, effective Jan. 1, 1980.

§ 113-272.1, as amended by Session Laws 1979, c. 748, s. 8, effective Jan. 1, 1980.

For a more detailed consideration of Session Laws 1979, c. 830, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Subchapter.

§ 113-270.2. Hunting licenses. — (a) Except as otherwise specifically provided by law, no one may take wild animals or wild birds without having first procured a current and valid hunting license.

(b) Except when indicated otherwise, all hunting licenses are annual licenses issued beginning August 1 each year running until the following July 31.

(c) The hunting licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident sportsman combination license—\$25.00. This license is valid only for use by an individual resident of the State.
- (2) Resident combination hunting-fishing license—\$10.00. This license is valid only for use by an individual resident of the State.
- (3) Resident State hunting license—\$7.50. This license is valid only for use by an individual resident of the State.

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- (4) Resident county hunting license—\$3.50. This license is valid for use by an individual resident of the State within the county in which he resides.
- (5) Controlled shooting preserve hunting license—\$10.00. This license is valid only for use by an individual hunting in special controlled shooting preserves licensed in accordance with this Subchapter.
- (6) Nonresident sportsman combination license—\$50.00. This license is valid for use by an individual with the State.
- (7) Nonresident State hunting license—\$25.00. This license is valid for use by an individual within the State.
- (8) Nonresident six-day hunting license—\$20.00. This license is valid only for use on six consecutive hunting days by an individual within the State. Consecutive hunting days do not include Sundays except on military reservations where Sunday hunting is permitted.
- (9) Disabled veteran lifetime combination hunting-fishing license—\$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (10) [Reserved.]
- (11) Age 70 lifetime combination hunting-fishing license—\$10.00. This license is valid only for use by an individual resident of the State who has attained the age 70 years. The license is valid for the life of the individual.
- (12) Totally disabled resident combination hunting-fishing license—\$7.50. This license is valid only for use by an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled.

(d) One dollar (\$1.00) of each nonresident State hunting license and nonresident six-day hunting license sold must be set aside by the Wildlife Resources Commission and contributed to a proper agency or agencies in the United States for expenditure in Canada for the propagation, management, and control of migratory waterfowl. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 384, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5, s. 13; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4, 6, 8; c. 673, s. 2; 1977, c. 658; 1979, c. 830, s. 1.)

Editor's Note. Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses that expire on July 31 of each year take effect on Aug. 1, 1980.

§ 113-270.3. Special activity licenses; big game kill reports. — (a) In addition to any hunting, trapping, or fishing license that may be required, individuals engaging in specially regulated activities must have the appropriate special activity license prescribed in this section before engaging in the regulated activity. Special activity licenses are annual licenses issued beginning August 1 each year running until the following July 31.

(b) The special activity licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident big game hunting license—\$3.50. This license is valid only for use by an individual resident of the State and must be procured before taking any big game within the State.
- (2) Nonresident big game hunting license—\$15.00. This license is valid for use by an individual within the State and, unless the resident big game hunting license has been validly procured, must be procured before taking any big game within the State.

Effective July 1, 1980, unless otherwise indicated.

- (3) Primitive weapons hunting license—\$5.00. This license is valid for use by an individual within the State and must be procured before taking any wild animals or birds with a primitive weapon during any special season for hunting with primitive weapons established by the Wildlife Resources Commission. During the regular season, a primitive weapon may be used without any special license unless its use is prohibited. For the purposes of this section a "primitive weapon" includes a bow and arrow, muzzle-loading firearm, and any other primitive weapon specified in the regulations of the Wildlife Resources Commission.
- (4) Game land license—\$8.00. This license is valid for use by an individual within the State and must be procured before hunting or trapping on game lands or fishing in managed waters on game lands. Managed waters include public mountain trout waters and other public waters, or private ponds, lying wholly or partly on game lands and designated as managed waters by the Wildlife Resources Commission. Possession of this license does not exempt its holder from payment of any applicable special use fees that may be prescribed by the Wildlife Resources Commission under the authority of G.S. 113-264(a), such as fees for field trials on game lands.
- (5) Falconry license — \$10.00. This license is valid for use by an individual within the State and must be procured before:
- Taking, importing, transporting, or possessing a raptor; or
 - Taking wildlife by means of falconry.

The Wildlife Resources Commission may issue classes of falconry licenses necessary to participate in the federal/State permit system, require necessary examinations before issuing licenses or permits to engage in various authorized activities related to possession and maintenance of raptors and the sport of falconry, and regulate licensees as required by governing federal law and regulations. To defray the costs of administering required examinations, the Wildlife Resources Commission may charge reasonable fees upon giving them. To meet minimum federal standards plus other State standards in the interests of conservation of wildlife resources, the Wildlife Resources Commission may impose all necessary controls, including those set out in the sections pertaining to collection licenses and captivity licenses, and may issue permits and require reports, but no collection license or captivity license is needed in addition to the falconry license.

(c) Any individual who kills any species of big game must report the kill to the Wildlife Resources Commission. The commission may by regulation prescribe the method of making the report, prescribe its contents, and require positive identification of the carcass of the kill, by tagging or otherwise.

(d) Any individual who possesses a current and valid resident or nonresident sportsman combination license may at lawful times and places engage in any specially regulated activity without any of the licenses required by subdivisions (1) through (4) of subsection (b). (1969, c. 1042, s. 7; 1973, c. 1097, s. 1; 1975, c. 171; c. 197, ss. 5, 7; c. 673, s. 1; 1977, c. 746, s. 1; 1979, c. 830, s. 1.)

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses which expire on July 31 of each year take effect on Aug. 1, 1980, except that falconry provisions take effect on July 1, 1979.

§ 113-270.4. Hunting guide license. — (a) No one may serve for hire as a hunting guide without having first procured a current and valid hunting guide license. This license is valid only for use by an individual resident of the State meeting the criteria set by the Wildlife Resources Commission for issuance of the license. Possession of the hunting guide license does not relieve the guide from meeting other applicable license requirements.

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(b) The hunting guide license is an annual license issued upon payment of five dollars and twenty-five cents (\$5.25) beginning August 1 of each year running until the following July 31.

(c) The Wildlife Resources Commission may by regulation provide for the qualifications and duties of hunting guides. In implementing this section, the Wildlife Resources Commission may delegate to the Executive Director and his subordinates administrative responsibilities concerning the selection and supervision of hunting guides, except that provisions relating to revocation of hunting guide licenses must be substantially set out in the regulations of the Wildlife Resources Commission. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18; 1975, c. 197, s. 1-4; 1977, c. 658; 1979, c. 830, s. 1.)

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses that expire on July 31 of each year take effect on Aug. 1, 1980.

§ 113-270.5. Trapping licenses. — (a) Except as otherwise specifically provided by law, no one may take fur-bearing animals by trapping, or by any other authorized special method that preserves the pelt from injury, without first having procured a current and valid trapping license. When the trapping license is required, it serves in lieu of a hunting license in the taking of fur-bearing animals. If fur-bearing animals are taken as game, at the times and by the hunting methods that may be authorized, hunting license requirements apply. All trapping licenses are annual licenses issued beginning August 1 each year running until the following July 31.

(b) The trapping licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident State trapping license — \$10.00. This license is valid only for use by an individual resident of the State.
- (2) Resident county trapping license — \$5.00. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (3) Nonresident State trapping license — \$60.00. This license is valid for use by an individual within the State. (1929, c. 278, s. 3; 1969, c. 1042, s. 6; 1973, c. 1262, s. 18; 1975, c. 197, ss. 9-11; 1979, c. 830, s. 1.)

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses that expire on July 31 of each year take effect on Aug. 1, 1980.

§ 113-271. Hook-and-line licenses in inland fishing waters. — (a) Except as otherwise provided in this Article, no one may fish by means of hook and line in inland fishing waters without having first procured a current and valid hook-and-line fishing license.

(b) Except when indicated otherwise, all hook-and-line fishing licenses are annual licenses. Annual fishing licenses, except for the sportsman combination licenses and the resident combination hunting-fishing license, are issued beginning January 1 each year running until the following December 31.

(c) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(d) The hook-and-line fishing licenses are granted upon such terms and for such prices as set out below. The amount stated in parentheses following the total price of each license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

- (1) Resident State license, \$9.50 (50¢). This license is valid only for use by an individual resident of the State.

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- (2) Resident State combination hunting-fishing license, \$12.50 (50¢). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-97.
 - (3) Resident county license, \$4.50 (25¢). This license is valid only for use by an individual resident of the State within the county in which he lives. The provisions of this section shall apply only to those fishing with artificial bait.
 - (4) Resident daily license, \$1.25 (25¢). This license is valid only for use during the day indicated by an individual resident of the State.
 - (5) Nonresident State license, \$15.50 (50¢). This license is valid for use by an individual within the State.
 - (6) Nonresident State daily license, \$2.25 (25¢). This license is valid only for use during the day indicated by an individual within the State.
- (e) A special guest fishing license, to be sold for an annual fee of twenty-five dollars (\$25.00) upon application to the Wildlife Resources Commission in the form which they may require, may be purchased by the owner or lessee of private property bordering inland or joint fishing waters entitling persons to fish from such waterfront property and any pier or dock originating on such property without any additional inland fishing license. This license is applicable only to private property and private docks and piers and is not valid for any property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only within the private property lines of the site of posting. The guest fishing license is not transferable as to person or location. These provisions shall not apply to residents of the Cherokee Indian Reservation. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9; 1973, c. 476, s. 143; c. 504; 1975, c. 197, s. 15; 1979, c. 737, ss. 1, 2; c. 748, s. 6; c. 830, s. 1.)

Editor's Note. —

Subsection (d) of this section is set out above as amended by Session Laws 1979, c. 748, s. 6, effective Aug. 1, 1979, and Jan. 1, 1980. The amendment increased the fees throughout the section, substituted "113-97" for "113-95" at the end of subdivision (2), added the second sentence of subdivision (3), changed the licenses in subdivisions (4) and (5) from 3-day licenses to daily licenses, and made other changes. Session Laws 1979, c. 748, s. 9, makes the amendment to subsection (d) effective Jan. 1, 1980, except that the amendment to subdivision (2) is made effective Aug. 1, 1979. Session Laws 1979, c. 748, s. 9, further provides: "That in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on Aug. 1, 1979, are valid through Sept. 1, 1979."

Subsection (e) in the section as set out above was added by amendment in Session Laws 1979, c. 737, effective Jan. 1, 1980.

Subsection (d) as amended by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and Aug. 1, 1980 is set out below.

Subsection (d), as Amended Effective July 1, 1980 and Aug. 1, 1980. — Subsection (d) of this section as amended by Session Laws 1979, c. 830, s. 1, reads as follows: "(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

- (1) Repealed by Session Laws 1979, c. 830, s. 1, effective August 1, 1980.
- (1a) Resident sportsman combination license — \$25.00. This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.
- (2) Resident combination hunting-fishing license — \$10.00. This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.
- (2a) Resident State fishing license — \$7.50.

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This license is valid only for use by an individual resident of the State.

(3) Resident county fishing license — \$3.50. This license is valid only for use by an individual resident of the State within the county in which he resides.

(4) Resident three-day fishing license — \$3.00. This license is valid only for use on three consecutive days by an individual resident of the State.

(4a) Nonresident sportsman combination license — \$50.00. This license is valid for use by an individual within the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.

(5) Nonresident State fishing license — \$12.50. This license is valid for use by an individual within the State.

(6) Nonresident three-day fishing license — \$5.50. This license is valid only for use on three consecutive days by an individual within the State.

(7) Repealed by Session Laws 1975, c. 197, s. 15.

(8) Lifetime fishing license for the legally blind — No charge. This license is valid only for use by an individual resident of the State who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the

individual so long as he remains legally blind.

(9) Disabled veteran lifetime combination hunting-fishing license — \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.

(10) [Reserved.]

(11) Age 70 lifetime combination hunting-fishing license — \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.

(12) Totally disabled resident combination hunting-fishing license — \$7.50. This license is valid only for use by an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled."

Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

§ 113-272. Special trout licenses. — (a) In addition to such hook-and-line fishing license as may be required in G.S. 113-271, no one may fish in public mountain trout waters without having first procured a current and valid special trout license.

(b) Except as otherwise indicated, special trout licenses are annual licenses issued beginning January 1 each year running until the following December 31.

(c) Public mountain trout waters are those waters so designated by the Wildlife Resources Commission which are managed and regulated to sustain a mountain trout fishery.

(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident special trout license, \$4.50 (25¢). This license is valid only for use by an individual resident of the State in public mountain trout waters.

(2) Nonresident special trout license, \$8.00 (50¢). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2; 1969, c. 1042, s. 10; 1973, c. 1262, s. 18; 1975, c. 197, s. 16; 1979, c. 748, s. 7; c. 830, s. 1.)

Editor's Note. —

Subsection (d) of this section is set out above as amended by Session Laws 1979, c. 748, s. 7, effective Jan. 1, 1980. The amendment increased the fees in subdivisions (1) and (2) from \$3.25 to

\$4.50 and from \$6.25 to \$8.00. Session Laws 1979, c. 748, s. 9, provides, in part: "that in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the

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amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on August 1, 1979, are valid through September 1, 1979."

Subdivision (d) as amended by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and Aug. 1, 1980, is set out below.

Subsection (d) as Amended Effective July 1, 1980 and Aug. 1, 1980. — Subsection (d) of this section as amended by Session Laws 1979, c. 830, s. 1, reads as follows: "(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

(1) Repealed by Session Laws 1979, c. 830, s. 1, effective August 1, 1980.

(1a) Resident sportsman combination license — \$25.00. This license is valid in public mountain trout waters for use only by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.

(1b) Resident special trout license — \$3.25. This license is valid only for use by an

individual resident of the State in public mountain trout waters.

(1c) Nonresident sportsman combination license — \$50.00. This license is valid for use by an individual within the State in public mountain trout waters. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.

(2) Nonresident special trout license — \$6.25. This license is valid for use by an individual within the State in public mountain trout waters.

(3) Lifetime fishing license for the legally blind — No charge. This license is valid in public mountain trout waters for use only by an individual resident of the State. It is issued upon the terms set out in G.S. 113-271(d)(8)."

Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

§ 113-272.1. Sportsman's combination license. — In lieu of the hook-and-line fishing licenses required by G.S. 113-271 and 113-272 and the hunting licenses required by G.S. 113-95, 113-95.2 and 113-95.5, an applicant may obtain a sportsman's combination license which entitles the holder thereof, during the open seasons and subject to the applicable creel, bag and possession limits, to fish by means of hook and line in joint and inland fishing waters, including public mountain trout waters, and to hunt wild animals and birds, including big game, on any lands which are open to hunting and fishing, including game lands. The sportsman's combination licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident sportsman's combination license, \$31.00 (50¢).

(2) Nonresident sportsman's combination license, \$62.00 (50¢). (1975, c. 197, s. 17; 1979, c. 748, s. 8.)

Editor's Note. — The 1979 amendment, effective Aug. 1, 1979, increased the fee in subdivision (1) from \$25.00 to \$31.00 and the fee in subdivision (2) from \$50.00 to \$62.00. Session Laws 1979, c. 748, s. 9, provides, in part: "That in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on

August 1, 1979, are valid through September 1, 1979."

Section Repealed Effective July 1, 1980. — This section is repealed by Session Laws 1979, c. 830, s. 1. Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980."

§ 113-272.2. Special device licenses. — (a) Except as otherwise specifically provided by law, no one may fish in inland fishing waters with any special device without having first procured a current and valid special device license. Special devices are all devices used in fishing other than hook and line.

(b) All special device licenses are annual licenses issued beginning January 1 each year running until the following December 31.

(c) The special device licenses issued by the Wildlife Resources Commission are as follows:

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- (1) Resident special device license — \$10.00. Except as regulations of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with special devices authorized by the regulations of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the license to specified registered equipment, require tagging of items of equipment, charge up to one dollar (\$1.00) per tag issued, and require periodic catch data reports. Unless specifically prohibited, nongame fish lawfully taken under this license may be sold.
- (2) Nonresident special device license — \$25.00. Except as regulations of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1) above.
- (3) Resident personal use special device license — \$3.00. This license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with special devices authorized by the regulations of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the total amount of equipment used, and may require tagging of unattended equipment. Fish taken under this license may not be sold.
- (4) Nonresident personal use special device license — \$10.00. This license is valid for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (3) above. (1979, c. 830, s. 1.)

§ 113-272.3. Special provisions respecting fishing licenses; grabbling; taking bait fish; use of landing nets. — (a) The Wildlife Resources Commission by regulation may define the meaning of "hook and line" and "special device" as applied to fishing techniques. Any technique of fishing that may be lawfully authorized which employs neither the use of any special device nor hook and line must be pursued under the appropriate hook-and-line fishing license.

(b) In accordance with established fishing customs and the orderly conservation of wildlife resources, the Wildlife Resources Commission may by regulation provide for use of nets or other special devices which it may authorize as an incident to hook-and-line fishing or for procuring bait fish without requiring a special device license. In this instance, however, the individual fishing must meet applicable hook-and-line license requirements. (1979, c. 830, s. 1.)

§ 113-272.4. Collection licenses. — (a) In the interest of the orderly and efficient conservation of wildlife resources, the Wildlife Resources Commission may provide for the licensing of qualified individuals to take any of the wildlife resources of the State under a collection license that may serve in lieu of any other license required in this Article. This license authorizes incidental transportation and possession of the wildlife resources necessary to implement the authorized purposes of the taking, but the Wildlife Resources Commission in its discretion may additionally impose permit requirements under subsection (d) below and G.S. 113-274.

(b) The Wildlife Resources Commission may delegate to the executive director the authority to impose time limits during which the license is valid and restrictions as to what may be taken and method of taking and possession, in the interests of conservation objectives. The Executive Director through his responsible agents must determine whether a particular license applicant meets

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the standards and qualifications for licensees set by the Wildlife Resources Commission. Methods of taking under a collection license need not be restricted to those applicable to ordinary hunting, trapping, or fishing, but the licensee must observe the restrictions as to taking, transportation, and possession imposed by the Executive Director upon the granting of the license.

(c) When a more limited duration period is not set by the Executive Director in implementing the regulations of the Wildlife Resources Commission, collection licenses are valid from January 1 through December 31 in any year. This license is issued upon payment of five dollars (\$5.00), but the Wildlife Resources Commission may provide for issuance without charge to licensees who represent educational or scientific institutions or some governmental agency.

(d) As necessary, the Executive Director may administratively impose on licensees under this section restrictions upon individuals taking, transporting, or possessing under the license which will permit ready identification and control of those involved in the interest of efficient administration of laws pertaining to wildlife resources. Restrictions may include requirements as to record keeping, tagging, marking packages, cages, or containers and exhibition of additional limited-purpose and limited-time permits that may be issued without charge to cover particular activities and other actions that may be administratively required in the reasonable implementation of the objectives of this Subchapter.

(e) If the Executive Director deems it administratively appropriate and convenient to do so, in the interests of simplifying the administration of licensing requirements, he may grant particular licensees under this section the privilege of utilizing assistants in taking, transporting, or possessing wildlife resources who themselves are not licensed. Any assistants so taking, transporting, or possessing wildlife resources must have readily available for inspection a written authorization from the licensee to engage in the activity in question. The written authorization must contain information administratively required by the Executive Director, and a copy of the authorization must be placed in the mail addressed to the Executive Director or his designated agent before any assistant acts under the authorization. In his discretion the Executive Director may refuse to issue, refuse to renew, or revoke the privilege conferred in this subsection. If this is done, each individual engaged in taking, transporting, or possessing wildlife resources under this section must meet all applicable licensing and permit requirements. (1979, c. 830, s. 1.)

§ 113-272.5. Captivity license. — (a) In the interests of humane treatment of wild animals and wild birds that are crippled, tame, or otherwise unfit for immediate release into their natural habitat, the Wildlife Resources Commission may license qualified individuals to hold a particular wild animal or wild bird alive in captivity. Before issuing this license, the Executive Director must satisfy himself that issuance of the license is appropriate under the objectives of this Subchapter, and that the wild animal or wild bird was not acquired unlawfully or merely as a pet. Upon refusing to issue the captivity license, the Executive Director may either take possession of the wild animal or wild bird for appropriate disposition or issue a captivity permit under G.S. 113-274(c)(1b) for a limited period until the holder makes proper disposition of the wild animal or wild bird.

(b) Unless a shorter time is set for a license upon its issuance under the provisions of subsection (c), captivity licenses are annual licenses issued beginning January 1 each year and running until the following December 31. This license is issued upon payment of five dollars (\$5.00) to the Wildlife Resources Commission.

(c) The Wildlife Resources Commission may require standards of caging and care and reports to and supervision by employees of the Wildlife Resources

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Commission as necessary to insure humane treatment and furtherance of the objectives of this Subchapter. The Executive Director in implementing the provisions of this section may administratively impose through responsible agents and employees restrictions upon the mode of captivity that he deems necessary, including prescribing methods of treatment and handling designed, if possible, to enable the wild animal or wild bird to become self-sufficient and requiring that the wild animal or wild bird be set free when self-sufficiency is attained. To this end, the Executive Director may issue the captivity license with an expiration date earlier than December 31 and may also act to terminate any captivity license earlier than the expiration date for good cause.

(d) Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders possession of the wild animal or wild bird unlawful.

(e) No captivity license may be issued for any cougar (*Felis concolor*), except to:

- (1) A bona fide publicly supported zoo.
- (2) An educational or scientific research institution.
- (3) An individual who lawfully possessed the cougar on June 29, 1977. The license may not be granted, however, for possession of a cougar within a municipality which prohibits such possession by ordinance.

(f) The licensing provisions of this section apply to black bears held in captivity, but, to the extent that it differs from this section, Article 2 of Chapter 19A of the General Statutes governs the keeping of black bears in captivity. (1979, c. 830, s. 1.)

§ 113-273. Dealer licenses. — (a) “Dealer” Defined; All Licenses Annual. — As used in this section, the word “dealer” includes all persons or individuals required to be licensed under the terms of this section. Except when indicated otherwise, all dealer licenses are annual licenses. Annual dealer licenses are issued beginning January 1 each year running until the following December 31.

(b) License Required; Regulations Governing Licensee. — Except as otherwise provided, no person may engage in any activity for which a dealer license is provided under this section without first having procured a current and valid dealer license for that activity. In implementing the provisions of this section, the Wildlife Resources Commission may by regulation govern every aspect of the licensee’s dealings in wildlife resources. Specifically, these regulations may require dealers to:

- (1) Implement a system of tagging or otherwise identifying and controlling species regulated under the license and pay a reasonable fee, not to exceed two dollars and twenty-five cents (\$2.25), for each tag furnished by the Wildlife Resources Commission;
- (2) Keep records and statistics in record books furnished by the Wildlife Resources Commission, and pay a reasonable charge to defray the cost of furnishing the books;
- (3) Be subject to inspection at reasonable hours and audit of wildlife resources and pertinent records and equipment;
- (4) Make periodic reports;
- (5) Post performance bonds payable to the Wildlife Resources Commission conditioned upon faithful compliance with provisions of law; and
- (6) Otherwise comply with reasonable regulations and administrative requirements that may be imposed under the authority of this section.

(c) Commercial Trout Pond License. — As used in this subsection, a “commercial trout pond” is a fish tank meeting standards set by the Wildlife Resources Commission or an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied through screened and regulated supply lines. A commercial trout pond must be stocked

Effective July 1, 1980, unless otherwise indicated.

exclusively with hatchery-reared mountain trout obtained from hatcheries approved by the Wildlife Resources Commission. The Wildlife Resources Commission may by regulation prescribe qualifications of operators of commercial trout ponds, standards of operation, and the conditions under which trout from such ponds may be taken, transported, possessed, bought, and sold. Commercial trout pond licenses issued by the Wildlife Resources Commission are as follows:

- (1) Commercial trout fishing pond license, twenty-five dollars (\$25.00). Authorizes the responsible licensed pond owner or operator to sell trout taken by fishermen from the pond to such fishermen.
- (2) Commercial trout holding pond license, five dollars (\$5.00). Authorizes the responsible licensed pond owner or operator to hold live trout for sale under conditions prescribed by the Wildlife Resources Commission. No person holding a fish propagation license for trout under subsection (e) need also procure this license.
- (d) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (e) Fish Propagation License. — The Wildlife Resources Commission may by regulation authorize and license the operation of fish hatcheries for species of fish which may be found in inland fishing waters. The Wildlife Resources Commission may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be taken, transported, possessed, bought, and sold. Fish propagation licenses issued by the Wildlife Resources Commission are as follows:
 - (1) Trout propagation license, twenty-five dollars (\$25.00). Authorizes artificial propagation and sale of all species of freshwater trout permitted under the regulations of the Wildlife Resources Commission in accordance with those regulations.
 - (2) Restricted propagation license, twenty-five dollars (\$25.00). Authorizes artificial propagation and sale of species of fish other than trout designated in the license, in accordance with governing regulations of the Wildlife Resources Commission.
- (f) Fur-Dealer License. — Except as otherwise provided in this subsection, any individual in this State who deals in furs must obtain an appropriate fur-dealer license. For the purposes of this subsection, "dealing in furs" is engaging in the business of buying or selling fur-bearing animals or other wild animals that may lawfully be sold, the raw furs, pelts, or skins of those animals, or the furs, pelts, or skins of wild animals which may not themselves be sold but whose fur, pelt, or skin may lawfully be sold. A hunter or trapper who has lawfully taken wild animals whose fur, pelt, or skin is permitted to be sold under this subsection is not considered a fur dealer if he exclusively sells the animals or the furs, pelts, and skins, as appropriate, to licensed fur dealers. Fur-dealer licenses issued by the Wildlife Resources Commission are as follows:
 - (1) Resident fur-dealer license, fifty dollars (\$50.00). Authorizes an individual resident of the State to deal in furs in accordance with the regulations of the Wildlife Resources Commission.
 - (2) Nonresident fur-dealer license, one hundred fifty dollars (\$150.00). Authorizes an individual within the State to deal in furs in accordance with the regulations of the Wildlife Resources Commission.
 - (3) Fur-dealer station license, one hundred dollars (\$100.00). Authorizes a person or individual to deal in furs at an established location where fur dealings occur under the supervision of a responsible individual manager named in the license. Individual employees of the business dealing in furs solely at the established location under the supervision of the manager need not acquire an individual license. Any employee who also deals in furs outside the established location must obtain the appropriate individual license. Individuals dealing in furs at an established location may elect to do so under their individual licenses.

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The Executive Director may administratively provide for reissuance of a station license without charge for the remainder of the year when either a business continues at an established location under a new supervising manager or the business changes to a new location. Before reissuing the license, however, the Executive Director must satisfy himself that there is a continuation of essentially the same business previously licensed and that any new supervising manager meets the qualifications imposed by regulations of the Wildlife Resources Commission. The supervising manager must file the names of all employees of the business covered by a fur-dealer station license, whether temporary or permanent, including employees who process or skin the animals.

The Executive Director must furnish supervising managers and individual licensees with forms or record books for recording required information as to purchase, sale, importation, exportation, and other dealings, and make a reasonable charge to cover the costs of any record books furnished. It is unlawful for anyone dealing in furs to fail to submit reports required by regulations or reasonable administrative directives.

(g) **Controlled Shooting Preserve Operator License.** — The Wildlife Resources Commission is authorized by regulation to set standards for and to license the operation of controlled shooting preserves operated by private persons. A "controlled shooting preserve" is an area on which only domestically raised game birds other than wild turkeys are taken. This license may be purchased for a fee of fifty dollars (\$50.00).

(h) **Game Bird Propagation License.** — No person may propagate game birds in captivity or possess game birds for propagation without first procuring a license under this subsection. The Wildlife Resources Commission may by regulation prescribe the activities to be covered by the propagation license, which species of game birds may be propagated, and the manner of keeping and raising the birds, in accordance with the overall objectives of conservation of wildlife resources. Except as limited by this subsection, propagated game birds may be raised and sold for purposes of propagation, stocking, food, or taking in connection with dog training as authorized in G.S. 113-291.1(d). Migratory game bird operations authorized under this subsection must also comply with any applicable provisions of federal law and regulations. The Wildlife Resources Commission may impose requirements as to shipping, marking packages, banding, tagging, or wrapping the propagated birds and other restrictions designed to reduce the change of illicit game birds being disposed of under the cover of licensed operations. The Wildlife Resources Commission may make a reasonable charge for any bands, tags, or wrappers furnished propagators. The game bird propagation license is issued by the Wildlife Resources Commission upon payment of a fee of five dollars (\$5.00). It authorizes a person or individual to propagate and sell game birds designated in the license, in accordance with the regulations of the Wildlife Resources Commission, except:

(1) Wild turkey and ruffed grouse may not be sold for food.

(2) Production and sale of pen-raised quail for food purposes is under the exclusive control of the Department of Agriculture. The Wildlife Resources Commission, however, may regulate the possession, propagation, and transportation of live pen-raised quail.

It is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) in addition to such other punishment the court may impose in its discretion to sell wild turkey or ruffed grouse for food purposes or to sell quail other than lawfully acquired pen-raised quail for food purposes.

(i) [Reserved.]

(j) [Reserved.]

(k) **Taxidermy License.** — Any individual who engages in taxidermy involving wildlife for any compensation, including reimbursement for the cost of

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materials, must first procure a taxidermy license. This license is an annual license issued by the Wildlife Resources Commission for ten dollars (\$10.00). The Wildlife Resources Commission must require a licensee to keep records concerning any wildlife taken or possessed by him; to keep records of the names and addresses of persons bringing him wildlife, the names and addresses of persons taking the wildlife if different, and other information concerning the origin of the wildlife; to inspect any applicable licenses or permits pertaining to the taking and possession of wildlife brought to him; to restrict him to taxidermy upon lawfully acquired wildlife; and to keep other pertinent records. No taxidermist subject to license requirements may sell any game or game fish in which he deals except that a taxidermist may acquire a valid possessory lien upon game or game fish under the terms of Chapter 44A of the General Statutes and, with a permit from the Executive Director, may sell the game or game fish under the procedure authorized in Chapter 44A. Wildlife acquired by a taxidermist is deemed "personal property" for the purposes of Chapter 44A. (1929, c. 333, ss. 1-7; c. 198, ss. 1, 2, 4; 1933, c. 337, ss. 1-4; c. 430, s. 1; 1935, c. 471, ss. 1-3; c. 486, ss. 4, 12, 21; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 386; c. 841; c. 849, s. 1; 1959, c. 304; 1961, c. 311; c. 834, s. 1; c. 1056; 1965, c. 957, s. 2; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 515, s. 5; c. 705, ss. 1, 2; 1973, c. 1098; c. 1262, ss. 18, 86; 1975, c. 197, ss. 1-4, 13, 14; 1977, c. 658; 1979, c. 830, s. 1.)

Cross Reference. — As to regulation of and Wildlife Resources Commission, see pen-raised quail by Department of Agriculture § 106-549.94.

§ 113-274. Permits. — (a) As used in this Article, the word "permit" refers to a written authorization issued without charge by an employee or agent of the Wildlife Resources Commission to an individual or a person to conduct some activity over which the Wildlife Resources Commission has jurisdiction. When sale of wildlife resources is permitted, regulations or the directives of the executive director may require the retention of invoices or copies of invoices in lieu of a permit.

(b) Except as otherwise specifically provided, no one may engage in any activity for which a permit is required without having first procured a current and valid permit.

(c) The Wildlife Resources Commission may issue the following permits:

(1) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(1a) Depredation Permit. — Authorizes the taking, destruction, transfer, removal, transplanting, or driving away of undesirable, harmful, predatory, excess, or surplus wildlife or wildlife resources. The permit must state the manner of taking and the disposition of wildlife or wildlife resources authorized or required and the time for which the permit is valid, plus other restrictions that may be administratively imposed in accordance with regulations of the Wildlife Resources Commission. No depredation permit or any license is needed for the owner or lessee of property to take wildlife while committing depredations upon the property. The Wildlife Resources Commission may regulate the manner of taking and the disposition of wildlife taken without permit or license, including wildlife killed accidentally by motor vehicle or in any other manner.

(1b) Captivity Permit. — Authorizes the possession of live wildlife that may lawfully be permitted to be retained alive, in accordance with governing regulations of the Wildlife Resources Commission. This permit may not substitute for any required collection license or captivity license, but may be temporarily issued for possession of wild animals or wild birds pending action on a captivity license or following its denial or

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termination. If this permit is issued for fish to be held indefinitely, the Wildlife Resources Commission may provide for periodic renewals of the permit, at least once each three years, to insure a review of the circumstances and conditions under which fish are kept. Wild animals and wild birds kept temporarily in captivity under this permit must be humanely treated and in accordance with any stipulations in the permit, but the standards of caging and care applicable to species kept under the captivity license do not apply unless specified in the permit. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the possession of the wildlife unlawful.

(1c) **Possession Permit.** — Authorizes the possession of dead wildlife or other wildlife resources lawfully acquired. The Wildlife Resources Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the possession of wildlife. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the possession of the wildlife unlawful.

(2) **Transportation Permit.** — The Wildlife Resources Commission may require the use of transportation permits by persons required to be licensed under this Article, or by persons and individuals exempt from license requirements, while transporting wildlife resources within the State — as necessary to discourage unlawful taking or dealing in wildlife resources and to control and promote the orderly and systematic transportation of wildlife resources within, into, through, and out of the State. Transportation permits may be issued for wildlife transported either dead or alive, in accordance with restrictions that may be reasonably imposed. When convenient, regulations or administrative directives may require the retention and use of an invoice or memorandum of sale, or the license or permit authorizing the taking or acquisition of the wildlife resources, as a transportation permit. When circumstances warrant, however, a separate additional transportation permit may be required. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the transportation of the wildlife resources unlawful.

(3) **Exportation or Importation Permit.** — Authorizes the exportation or importation of wildlife resources from or into the State or from county to county. The Wildlife Resources Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the exportation and importation of wildlife resources. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the importation or exportation of the wildlife resources unlawful.

(3a) **Trophy Wildlife Sale Permit.** — Authorizes the owner of lawfully taken and possessed dead wildlife specimens or their parts that are mounted, stuffed, or otherwise permanently preserved to sell identified individual specimens that may lawfully be sold under applicable laws and regulations.

(3b) **Trout Sale Permit.** — Authorizes the sale at wholesale or retail of dead artificially-propagated mountain trout for food purposes if the trout have been lawfully acquired from a hatchery approved by the Wildlife Resources Commission and are appropriately wrapped or otherwise identified as hatchery-reared trout as required by governing regulations. No person who holds a license that authorizes the sale of trout need purchase this permit.

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- (4) Other Permits. — In implementing the provisions of this Subchapter, the Wildlife Resources Commission may issue permits for taking, purchase, or sale of wildlife resources if the activity is lawfully authorized, if there is a need for control of the activity, and no other license or permit is applicable. In addition, if a specific statute so provides, a permit under this subdivision may be required in addition to a license when there is a need for closer control than provided by the license. (1935, c. 486, ss. 4, 22; 1941, c. 231, s. 1; 1965, c. 957, s. 2; 1971, c. 423, s. 2; c. 809, s. 1; 1973, c. 1262, s. 18; 1977, c. 794, s. 1; 1979, c. 830, s. 1.)

§ 113-275. General provisions respecting licenses and permits. — (a) The Wildlife Resources Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of wildlife resources.

(b) Every license issued under the provisions of this Article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with regulations of the Wildlife Resources Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Wildlife Resources Commission to responsible employees or agents.

(c) Every license issued under the provisions of this Article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(d) In implementing the sale and distribution of licenses issued under this Article, the Wildlife Resources Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in regulations of the Wildlife Resources Commission in order to be validly required.

(e) Where employees of the Wildlife Resources Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Wildlife Resources Commission without any deduction of the stipulated license agent's fee.

(f) Except as otherwise specifically provided by statute or except as the Wildlife Resources Commission may by regulation prescribe to the contrary:

- (1) All licenses and permits under this Article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;
- (2) All licenses and permits under this Article are nontransferable; and
- (3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit — except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferable license or permit for the purpose of circumventing the requirements of this Article.

(h) It is unlawful for any person engaged in regulated operations under this Article to refuse to exhibit or display any required license, permit, or identification upon the request of any employee or agent of the Wildlife

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Resources Commission or of any officer authorized to enforce the provisions of this Article.

(i) It is unlawful to refuse to comply with any provisions of this Article or of regulations and administrative requirements reasonably promulgated under the authority of this Article.

(j) It is a misdemeanor punishable in the discretion of the court for any person;

- (1) Knowingly to engage in any activity regulated under this Article with an improper, false, or altered license or permit;
- (2) Knowingly to make any application for a license or permit to which he is not entitled;
- (3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article; or
- (4) To counterfeit, alter, or falsify any application, license, or permit under this Article. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§ 113-276. Exemptions and exceptions to license and permit requirements.

— (a), (b) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(c) Except as otherwise provided in this Subchapter, every landholder, his spouse, and dependents under 18 years of age residing with him may take wildlife upon the land held by the landholder without any license required by G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, 113-271, or 113-272.

(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting, trapping, and fishing license requirements of G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, and 113-272 if:

- (1) He is accompanied by a responsible adult who is in compliance with applicable license requirements; or
- (2) He is carrying a current and valid license appropriate to the activity which has been issued to one of his parents or to his guardian.

Individuals under 16 years of age are exempt from the fishing license requirements of G.S. 113-271.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing-license requirements of G.S. 113-271. "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or streams substantially represents or follows the course of such boundary line.

(f) A special device license is not required when a landing net is used:

- (1) To take nongame fish in inland fishing waters; or
- (2) To assist in taking fish in inland fishing waters when the initial and primary method of taking is by the use of hook and line — so long as applicable hook-and-line fishing license requirements are met.

As used in this subsection, a "landing net" is a net with a handle not exceeding eight feet in length and with a hoop or frame to which the net is attached not exceeding 60 inches along its outer perimeter.

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(g) Bow nets covered by a special device license may be used in waters and during the seasons authorized in the regulations of the Wildlife Resources Commission by an individual other than the licensee with the permission of the licensee. The individual using another's bow net must also secure the net owner's special device license and keep it on or about his person while fishing in inland fishing waters.

(h) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(i) A food server may prepare edible wildlife lawfully taken and possessed by a patron for serving to the patron and any guest he may have. The Executive Director may provide for the keeping of records by the food server necessary for administrative control and supervision with respect to wildlife brought in by patrons.

(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of:

(1) Purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2a), (3), and (4); and

(2) Utilizing the natural-bait exemption in subsection (e) above.

(k) A person may participate in a field trial for beagles without a hunting license if approved in advance by the Executive Director, conducted without the use or possession of firearms, and on an area of not more than 100 acres of private land which is completely and permanently enclosed with a metal fence through which rabbits may not escape or enter at any time.

(l) The fishing license provisions of this Article do not apply upon the lands held in trust by the United States for the Eastern Band of the Cherokee Indians. (1929, c. 335, ss. 1, 10; 1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 567, ss. 1, 6; c. 617; 1949, c. 1203, s. 1; 1951, c. 1112, s. 2; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 312; c. 329; c. 834, s. 1; 1963, c. 170; 1965, c. 957, s. 2; 1967, c. 127; c. 654; c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; c. 1231, s. 1; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4; 1977, c. 191, s. 1; c. 658; 1979, c. 830, s. 1.)

§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions. — In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with regulations that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of

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identification, including a vehicle driver license, may be required to be exhibited, if available.

- (5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents (\$2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags. (1979, c. 830, s. 1.)

§ 113-276.2. Licensees and permittees subject to administrative control; refusal to issue or reissue, suspension, and revocation of their licenses and permits; court orders of suspension. — (a) This section applies to the administrative control of:

- (1) Persons, other than individual hunters and fishermen taking wildlife as sportsmen, holding permits under this Article;
- (2) Individuals holding special device licenses under G.S. 113-272.2(c)(1) and (2);
- (3) Individuals holding collection licenses under G.S. 113-272.4;
- (4) Individuals holding captivity licenses under G.S. 113-272.5; and
- (5) Persons holding dealer licenses under G.S. 113-273.

(b) Before issuing any license or permit to persons subject to administrative control under this section, the Executive Director must satisfy himself that the person meets the qualifications set by statute, regulation, or his administrative guidelines. If the person fails to meet the qualifications or if the Executive Director learns of some other cause for believing that issuing the license or permit would be contrary to the best interests of the conservation of wildlife resources, he must refuse to issue the license or permit.

(c) Before reissuing any license or permit to any person subject to administrative control, the Executive Director must review all available information and apply the same standards that governed initial issuance of the license or permit before he may reissue it.

(d) Upon refusing to issue or reissue a license or permit under this section, the Executive Director must notify the person in writing of the reasons for his action and inform him that if he contests the Executive Director's action within 10 days he is entitled to a hearing in accordance with the provisions of the Administrative Procedure Act. The notice must be personally served by a law enforcement officer or an agent of the Wildlife Resources Commission or sent by mail with return receipt requested. If the person refused the license or permit notifies the Executive Director within 10 days of receiving notice that he does contest the action, the Executive Director must formally notify all appropriate parties that a hearing will be conducted in accordance with the provisions of Article 3 of Chapter 150A of the General Statutes and any applicable regulations of the Wildlife Resources Commission. The Wildlife Resources Commission may provide by regulation either for the appointment of a hearing officer or officers or may direct that hearings in some or all classes of cases be conducted by the commission itself. To the extent the procedure governing the hearing is not covered by this section, the Administrative Procedure Act, or regulations of the Wildlife Resources Commission, the Executive Director must direct that appropriate procedures be followed which are not inconsistent with governing statutes and regulations.

(e) If the Executive Director discovers that a person subject to administrative control does not meet, or no longer meets, the qualifications for issuance of the license or permit, has committed a substantial criminal violation of this Subchapter or of its regulations, or has seriously or persistently failed to comply with the terms and conditions upon which the license or permit was issued, he

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must notify the person in writing of his findings and of his intention to revoke the license or permit unless the person contests the Executive Director's action within 10 days. Any revocation or suspension of a license or permit ordered by a court under G.S. 113-277 runs concurrently with any revocation under this section. The notice must be personally served by a law enforcement officer or an agent of the Wildlife Resources Commission or sent by mail with return receipt requested. If the person notifies the Executive Director that he contests the facts relied upon by the Executive Director or the appropriateness of revocation under the circumstances of the case, the Executive Director must afford the person a hearing in accordance with the provisions of the Administrative Procedure Act and the special provisions of subsection (d) above. If the person does not notify the Executive Director that he contests his action within 10 days of receiving notice, the Executive Director must revoke any license or permit in question as provided in subsection (g) below.

(f) If the decision to revoke the person's license is sustained after all proceedings under the Administrative Procedure Act, including judicial review, if any, the Executive Director must revoke any license or permit in question as provided in subsection (g) below.

(g) Upon revocation of a license or permit, the Executive Director or his agent must request return of the license or permit and all associated forms, tags, record books, inventories, invoice blanks, and other property furnished by the Wildlife Resources Commission or required to be kept by the commission solely in connection with the license or permit. If the person needs to retain a copy of the property returned to the Wildlife Resources Commission for tax purposes or other lawful reason, the person may copy items returned if the copies are clearly marked in a manner that they could not be mistaken for the originals. In securing property to be returned or in otherwise closing out the affairs conducted under the license or permit, agents of the Wildlife Resources Commission may enter at reasonable hours the premises of the person in which wildlife resources or items of property pertaining to the license or permit are kept, or reasonably believed to be kept, to inspect, audit, inventory, remove, or take other appropriate action. Any wildlife resources in the possession of the person which he may no longer possess must be disposed of in accordance with the most nearly appropriate provision of G.S. 113-137. If a person fails to return to an agent of the Wildlife Resources Commission all wildlife resources and other property covered by this subsection; refuses to allow entry by the agent to inspect, audit, remove property, or perform other duties; or otherwise obstructs an agent of the Wildlife Resources Commission in performing his duties under this subsection, he is guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both. Each day's violation is a separate offense.

(h) No person refused issuance or reissuance of a license or permit under this section, or whose license or permit was revoked, is eligible to apply again for that or any similar license or permit for two years. Upon application, the Executive Director may not grant the license or permit unless the person produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, regulations, and reasonable administrative directives pertaining to the license or permit.

(i) The Executive Director is required to make necessary investigations and cause necessary disclosure of information by all persons subject to administrative control, and all applicants for a license or permit that would place them in this category, to determine that the real party in interest is seeking or has been issued the license or permit. Any attempt to circumvent the provisions of this section is a misdemeanor punishable in the discretion of the court.

(j) So long as a license or permit has not expired, the person contesting any action to revoke retains it and may continue his operations under the license or

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permit. If the Executive Director determines that the effective conservation of wildlife resources would be seriously impaired by continued unfettered operations or by continued possession of property by the person subject to administrative control, the Executive Director may apply to the appropriate court for an order:

- (1) Placing special reporting and inspection requirements on the person; or
- (2) Impounding some or all of the records or other property associated with the license or permit; or
- (3) Limiting the scope of operations under the license or permit; or
- (4) If there is clear evidence of a serious threat to the conservation of wildlife resources, suspending the operations of the person under the license or permit; or
- (5) Placing other appropriate restrictions, prohibitions, or requirements upon the person. (1979, c. 830, s. 1.)

§ 113-276.3. Mandatory suspension of entitlement to license or permit for fixed period upon conviction of specified offenses. — (a) Upon conviction of a suspension offense under this section, the defendant's entitlement to any license or permit applicable to the type of activity he was engaging in that resulted in the conviction is suspended for the period stated in subsection (d). The period of suspension begins:

- (1) Upon the surrender to an authorized agent of the Wildlife Resources Commission of all applicable licenses and permits; or
- (2) If no licenses or permits are possessed, the defendant fails or refuses to surrender all licenses or permits, or any license or permit is lost or destroyed, upon the Executive Director's placing in the mail the notification required by subsection (c).

(b) If the defendant does not wish to appeal, the presiding judge may order surrender of all applicable licenses and permits to an agent of the Wildlife Resources Commission. If the presiding judge does not order the surrender, or if there is for any other reason a failure by the defendant to surrender all applicable licenses and permits, an authorized agent of the Wildlife Resources Commission must demand surrender. Each day's failure or refusal to surrender a license or permit upon demand, in the absence of satisfactorily accounting for the failure to do so, is a separate offense. A charge under this subsection does not affect the power of the court to institute contempt proceedings if a failure or refusal to surrender a license or permit also violates a court order. Any agent of the Wildlife Resources Commission accepting surrender of licenses and permits, in the courtroom or at a subsequent time and place, must transmit them to the Executive Director with a written notation of the date of surrender and a report of other pertinent circumstances required by the Executive Director.

(c) The Executive Director must institute a procedure for the systematic reporting to him by protectors or other authorized agents of the Wildlife Resources Commission of all convictions of suspension offenses under this section. Upon obtaining information concerning conviction of a suspension offense and receiving any surrendered licenses and permits, the Executive Director must determine if all appropriate licenses and permits possessed by the defendant have been surrendered; if not, the Executive Director must notify the appropriate agent of the Wildlife Resources Commission to demand surrender or renew a demand for surrender under the terms of subsection (b) if it is feasible to do so. Upon satisfying himself that he has received all licenses and permits for which surrender may feasibly be obtained, if any, the Executive Director must mail the defendant a notice of the suspension of his entitlement to possess or procure any license or permit of the type applicable to the activity engaged in that resulted in conviction of the suspension offense. The notice must specify the commencement and termination dates of the period of suspension that apply under the terms of this section.

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(d) Any violation of this Subchapter or of any regulation adopted by the Wildlife Resources Commission under the authority of this Subchapter which is subject to a penalty greater than the one provided in G.S. 113-135(a)(1) is a suspension offense. Conviction of any of the following suspension offenses results in a suspension for a period of two years:

- (1) A violation of G.S. 113-294(b).
- (2) A violation of G.S. 113-294(c).
- (3) A violation of G.S. 113-294(e).
- (4) A violation of G.S. 113-294(k).

A conviction of any other suspension offense results in a suspension for a period of one year. (1979, c. 830, s. 1.)

§ 113-277. Suspension and revocation of licenses and permits in the discretion of the court; suspension of entitlement; court's power concurrent; definition of "conviction"; penalties. — (a) Upon conviction of any licensee or permittee under this Article of a violation of any law or regulation administered by the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may order surrender of that license or permit plus any other license or permit issued by the Wildlife Resources Commission. The court may order suspension of any license or permit for some stipulated period or may order revocation of any license or permit for the remainder of the period for which it is valid. A period of suspension may extend past the expiration date of a license or permit, but no period of suspension longer than two years may be imposed. During any period of suspension or revocation, the licensee or permittee is not entitled to purchase or apply for any replacement, renewal, or additional license or permit regulating the same activity covered by the suspended or revoked license or permit. The Wildlife Resources Commission may by administrative action and by regulation devise procedures designed to implement license or permit suspensions and revocations that may be ordered by the courts.

(a1) Upon conviction of any person who is not a licensee or permittee under this Article of a violation of any law or regulation administered by the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may suspend the entitlement of the defendant to possess or procure any specified licenses and permits issued by the Wildlife Resources Commission for a period not to exceed two years.

(a2) The authority of a court to suspend entitlement or order suspension or revocation of a license or permit under this section does not preempt the power of the Executive Director or the Wildlife Resources Commission to act under G.S. 113-276.2 and G.S. 113-276.3, but the court may in its discretion suspend entitlement or order suspension or revocation of any license or permit under this section to be effective concurrently with any action taken under the authority of those two sections.

(a3) As used in this Article, the term "conviction" has the same meaning assigned to it in G.S. 113-166(a).

(b) It is a misdemeanor punishable in the discretion of the court for any person during a period of suspension or revocation under the terms of this Article:

- (1) To engage in any activity licensed in this Article without the appropriate license or permit;
- (2) Knowingly to make any application for a license or permit to which he is not entitled;
- (3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article;
- (4) To counterfeit, alter, or falsify any application, license, or permit under this Article;

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- (5) Knowingly to retain and use any license or permit which has been ordered revoked or suspended under the terms of this Article; or
- (6) Willfully to circumvent the terms of suspension or revocation in any manner whatsoever. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§§ 113-278 to 113-290: Reserved for future codification purposes.

ARTICLE 22.*Regulation of Wildlife.***(Effective July 1, 1980, unless otherwise indicated.)**

§ 113-291. General restrictions. — Except as specifically permitted in this Subchapter or in regulations made under the authority of this Subchapter, no person may take, possess, buy, sell, or transport any wildlife — whether dead or alive, in whole or in part. Nor may any person take, possess, buy, sell, or transport any nests or eggs of wild birds except as so permitted. No person may take, possess, buy, sell, or transport any wildlife resources in violation of the regulations of the Wildlife Resources Commission. (1965, c. 957, s. 2; 1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are

effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-291.1. Manner of taking wild animals and wild birds. — (a) Except as otherwise provided, game may only be taken between a half hour before sunrise and a half hour after sunset and only by one or a combination of the following methods:

- (1) With a rifle.
- (2) With a shotgun not larger than number 10 gauge.
- (3) With a bow and arrow of a type prescribed in the regulations of the Wildlife Resources Commission.
- (4) With the use of dogs.
- (5) By means of falconry.

Fur-bearing animals may be taken at any time during open trapping season with traps authorized under G.S. 113-291.6. Nongame animals and birds open to hunting may be taken during the hours authorized by regulation during any open season by the methods for taking game. Use of pistols in taking wildlife is governed by subsection (g). The Wildlife Resources Commission may prescribe the manner of taking wild animals and wild birds on game lands and public hunting grounds.

(b) No wild animals or wild birds may be taken:

- (1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:

- a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any

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vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

b. For transportation incidental to the taking.

- (2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait, except as may be otherwise provided by statute. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A.

(c) It is a misdemeanor punishable in the discretion of the court for any person taking wildlife to have in his possession any:

- (1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.

- (2) Weapon of mass death and destruction as defined in G.S. 14-288.8.

(d) In accordance with governing regulations of the Wildlife Resources Commission imposing further restrictions that may be necessary, hunters may conduct field trials with dogs in areas and at times authorized with the use of approved weapons and ammunition. The Wildlife Resources Commission may authorize organized retriever field trials, utilizing domestically raised pheasants or waterfowl, to be held under its permit.

(d1) Except in areas closed to protect sensitive wildlife populations, hunters may train dogs during the closed season:

- (1) With the use of approved weapons and ammunition; and

- (2) If reasonable control is exercised to prevent the dogs from running unsupervised at large and from killing wild animals and wild birds.

(e) Raccoons and opossum may be taken at night with dogs during seasons set by regulations of the Wildlife Resources Commission with the use of artificial lights of a type designed or commonly used to aid in taking raccoon and opossum. No conveyance may be used in taking any raccoon or opossum at night, but incidental transportation of hunters and dogs to and from the site of hunting is permitted. The Wildlife Resources Commission may by regulation prescribe restrictions respecting the taking of frogs, or other creatures not classified as wildlife which may be found in areas frequented by game, with the use of an artificial light, and may regulate the shining of lights at night in areas frequented by deer as provided in subsection (e1).

(e1) After hearing sufficient evidence and finding as a fact that an area frequented by deer is subject to substantial unlawful night deer hunting or that residents in the area have been greatly inconvenienced by persons shining lights on deer, the Wildlife Resources Commission may by regulation prohibit the intentional sweeping of that area with lights, or the intentional shining of lights on deer, from 11:00 p.m. until one-half hour before sunrise. Before adopting this regulation, the Wildlife Resources Commission must propose it at a public hearing in the area to be closed and seek the reactions of the local inhabitants. The regulation must exempt necessary shining of lights by landholders, motorists engaged in normal travel on the highway, and campers and others legitimately in the area, who are not attempting to attract wildlife. This subsection does not limit the right of hunters to take raccoon and opossum with dogs lawfully at night with a light under the terms of subsection (e).

(f) To keep North Carolina provisions respecting migratory birds in substantial conformity with applicable federal law and regulations, the Wildlife Resources Commission may by regulation expand or modify provisions of this

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Article if necessary to achieve such conformity. In particular, the commission may prohibit the use of rifles, unplugged shotguns, live decoys, and sinkboxes in the taking of migratory game birds; vary shooting hours; adopt specific distances, not less than 300 yards, hunters must maintain from areas that have been baited, and fix the number of days afterwards during which it is still unlawful to take migratory game birds in the area; and adopt similar provisions with regard to the use of live decoys.

(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a pistol of .22 caliber with a barrel not less than six inches in length and loaded with long-rifle ammunition. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken.

(h) In the interests of enhancing the enjoyment of sportsmen, and if consistent with conservation objectives, the Wildlife Resources Commission may by regulation relax requirements of this section on controlled shooting preserves and in other highly controlled situations.

(i) The intentional destruction or substantial impairment of wildlife nesting or breeding areas or other purposeful acts to render them unfit is unlawful. These prohibitions include cutting down den trees, shooting into nests of wild animals or birds, and despoliation of dens, nests, or rookeries.

(j) It is unlawful to take deer swimming or in water above the knees of the deer. (S.C., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, c. 207; c. 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, c. 75; c. 140; 1971, c. 439, ss. 1-3; c. 899, s. 1; 1973, c. 1096; c. 1262, c. 18; 1975, c. 669; 1977, c. 493; 1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that subsection (e1) of this section and the falconry provisions of this Subchapter are effective July 1, 1979.

§ 113-291.2. Seasons and bag limits on wild animals and birds; including animals and birds taken in bag; possession and transportation of wildlife after taking. — (a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions.

(b) Any individual hunter or trapper who in taking a wild animal or bird has wounded or otherwise disabled it must make a reasonable effort to capture and kill the animal or bird. All animals and birds taken that can be retrieved must be retrieved and counted with respect to any applicable bag limits governing the individual taking the animal or bird.

(c) An individual who has lawfully taken game within applicable bag, possession, and season limits may, after the game is dead, possess and personally transport it for his own use by virtue of his hunting license, and without any additional permit, subject to tagging and reporting requirements that may apply to the fox and big game, as follows:

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- (1) In an area in which the season is open for the species, the game may be possessed and transported without restriction.
- (2) The individual may possess and transport the game lawfully taken on a trip:
 - a. To his residence;
 - b. To a preservation or processing facility that keeps adequate records as prescribed in G.S. 113-291.3(b)(3) or a licensed taxidermist;
 - c. From a place authorized in subparagraph b to his residence.
- (3) The individual may possess the game indefinitely at his residence, and may there accumulate lawfully-acquired game up to the the greater of:
 - a. The applicable possession limit for each species; or
 - b. One half of the applicable season limit for each species.

The above subdivisions apply to an individual hunter under 16 years of age covered by the license issued to his parent or guardian, if he is using that license, or by the license of an adult accompanying him. An individual who has lawfully taken game as a landholder without a license may possess and transport the dead game, taken within applicable bag, possession, and season limits, to his residence. He may indefinitely retain possession of such game, within aggregate possession limits for the species in question, in his residence.

(d) Except in the situations specifically provided for above, the Wildlife Resources Commission may by regulation impose reporting, permit, and tagging requirements that may be necessary upon persons:

- (1) Possessing dead wildlife taken in open season after the close of that season.
- (2) Transporting dead wildlife from an area having an open season to an area with a closed season.
- (3) Transporting dead wildlife lawfully taken in another state into this State.
- (4) Possessing dead wildlife after such transportation.

The Wildlife Resources Commission in its discretion may substitute written declarations to be filed with agents of the commission for permit and tagging requirements. (1935, c. 486, ss. 16, 17; 1949, c. 1205, s. 1; 1973, c. 1262, s. 18; 1977, c. 499, s. 1; 1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

§ 113-291.3. Possession, sale, and transportation of wildlife. — (a) Live wildlife and the nests and eggs of wild birds may be taken, possessed, transported, bought, sold, imported, exported, or otherwise acquired or disposed of only as specifically authorized in this subchapter or its implementing regulations. The Wildlife Resources Commission may impose necessary reporting, permit, and tagging requirements in regulating activities involving live wildlife and the nests and eggs of wild birds. The Wildlife Resources Commission may charge a reasonable fee to defray the cost of any tagging procedure.

(b) With respect to dead wildlife:

- (1) Lawfully taken wildlife may be possessed and transported as provided in G.S. 113-291.2. Wildlife possessed under any dealer license may be possessed and transported in accordance with the provisions of law and regulations applicable to the license, and wildlife may be sold to qualified persons if authorized under provisions governing the license. In other situations, except as this subchapter may expressly provide, possession and transportation of wildlife may be regulated by the Wildlife Resources Commission.

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- (2) Unless there is a specific restriction on the transfer of the species in question, an individual may accept the gift of wildlife lawfully taken within North Carolina if taking possession does not cause him to exceed applicable possession limits. If he notes and preserves in writing the name and address of the donor and under what license or exemption from license requirements the wildlife was taken, he may possess that wildlife without a permit in the places possession without a permit would be authorized in G.S. 113-291.2 had he taken the wildlife.
- (3) A licensed taxidermist or other licensed dealer taking temporary possession of wildlife of another may possess the wildlife that he is authorized to handle under his license in accordance with the regulations of the Wildlife Resources Commission. A person not a dealer operating a preservation or processing facility, whether commercially or not, may possess the wildlife owned by another without any permit or license if he ascertains that the wildlife was lawfully taken within the State and keeps a written record of:
 - a. The name and address of the owner of the wildlife and an adequate description of the wildlife left with him. If the description of the wildlife changes as the result of processing, the new description must be recorded.
 - b. The date, serial number, and type of the license under which the wildlife was taken or the applicable exemption from license requirements which the taker met.
 - c. The date all wildlife left with him is received and returned to the owner. If the receiving or returning of possession is to an agent or common carrier or otherwise occurs under circumstances in which permit requirements may apply, the type and date of the permit which authorizes the transaction must also be recorded.
- (4) The sale of rabbits and squirrels and their edible parts not for resale is permitted. If the Wildlife Resources Commission finds that affected game populations would not be endangered, it may authorize the sale of heads, antlers, horns, hides, skins, plumes, feet, and claws of one or more game animals or birds. In addition, it may authorize the sale of bobcats, opossums, and raccoons, and their parts, following their taking as game animals. No part of any bear or wild turkey may be sold under the above provisions, however, and no part of any fox taken in North Carolina may be sold except as provided in G.S. 113-291.4. In regulating sales, the Wildlife Resources Commission may impose necessary permit requirements.
- (5) Lawfully taken fur-bearing animals and their parts, including furs and pelts, may, subject to any tagging and reporting requirements, be possessed, transported, bought, sold, given or received as a gift, or otherwise disposed of without restriction. The Wildlife Resources Commission may regulate the importation of wildlife from without the State by fur dealers, and may regulate the sale of fox fur and other wildlife hides taken within the State if sale of them is authorized. Fox furs lawfully taken without the State may be imported, possessed, transported, bought, sold, and exported in accordance with reasonable regulations of the Wildlife Resources Commission. Processed furs acquired through lawful channels within or without the State by persons other than fur dealers are not subject to regulation.
- (6) Nongame animals and birds open to hunting and nongame fish lawfully taken, except as this subchapter and its implementing regulations expressly provide otherwise, may be possessed, transported, bought, sold, given or received as a gift, or otherwise disposed of without restriction.

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- (7) The possession and disposition of wild animals and wild birds killed accidentally or to prevent or halt depredations to property are governed by G.S. 113-274(1a).
- (c) The Wildlife Resources Commission may make reasonable regulations governing the marking of packages, crates, and other containers in which wildlife may be shipped.
- (d) Any person hiring a hunter or trapper to take game is deemed to be buying game. Any hunter or trapper who may be hired is deemed to be selling game. (1935, c. 486, ss. 19, 22; 1941, c. 231, s. 1; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§ 113-291.4. Regulation of foxes; study of fox and fur-bearer populations.

— (a) All of the regulatory powers granted the Wildlife Resources Commission generally with respect to game, wild animals, and wildlife apply to foxes unless there are specific overriding restrictions in this section.

(b) Except for any closed season under subsection (h), foxes may be taken with dogs both night and day on a year-round basis.

(c) Foxes may not be taken with firearms except:

(1) As provided in subsection (f).

(2) As an incidental method of humanely killing them following any lawful method of taking that does not result in death.

(3) When they are lawfully shot under laws and regulations pertaining to the destruction of animals committing depredations to property.

(d) Foxes may not be taken with the aid of any electronic calling device.

(e) The Wildlife Resources Commission is directed to improve its capabilities for studying fox and fur-bearer populations generally and, on the basis of its present knowledge and future studies, to implement management methods and impose controls designed to produce optimum fox and fur-bearer populations in the various areas of the State.

(f) If, on the basis of its studies and other information available, the Wildlife Resources Commission determines the population of foxes in an area is fully adequate to support a harvesting of that population, the Wildlife Resources Commission may, upon passage of local legislation permitting same, open a season for taking foxes by trapping. When the season is open for trapping, foxes may also be taken by the use of methods lawful for taking game animals, including the use of firearms. Any bag, possession, or season limits imposed on foxes taken from the area in question will apply in the aggregate to all foxes killed without regard to the method of taking.

(g) The Wildlife Resources Commission may provide for the sale of foxes lawfully taken in areas of open season as provided in subsection (f), under a system providing strict controls. These controls must include the tagging of foxes as required below and a system of permits to restrict those who may deal in foxes to dealers who meet high standards of integrity, reliability in keeping records and inventory, and promptness in submitting reports. The Wildlife Resources Commission must implement a system of tagging foxes and fox furs with a special fox tag, and the commission may charge two dollars and twenty-five cents (\$2.25) for each tag furnished to hunters, trappers, and fur dealers. The fox tag or tags must be procured before taking foxes by any method designed to kill foxes or when the intent is to harvest foxes. The number of tags furnished to any individual may be limited as to area and as to number in accordance with area, bag, possession, or season limits that may be imposed on foxes. No person may continue to hunt or trap foxes under this fox harvesting provision unless he still has at least one valid unused fox tag lawful for use in the area in question. A person hunting foxes with dogs not intending to kill them need not have any fox tag, but any fox accidentally killed by that hunter must be disposed of without sale as provided below, and no foxes not tagged may be sold. The Wildlife Resources Commission may by regulation provide reporting

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and controlled-disposition requirements, not including sale, of foxes killed accidentally by dog hunters, motor vehicles, and in other situations; it may also impose strict controls on the disposition of foxes taken by owners of property under the laws and regulations relating to depredations, and authorize sale under controlled conditions of foxes taken under depredation permits.

(h) In any area of the State in which the Wildlife Resources Commission determines that hunting of foxes with dogs has an appreciably harmful effect upon turkey restoration projects, it may declare a closed season for an appropriate length of time upon the taking with dogs of all species of wild animals and birds. Except as otherwise provided in G.S. 113-291.1(d) or (d1), this subsection does not prohibit lawful field trials or the training of dogs. (1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "Immediately upon ratification [June 7, 1979] the commission may

expend funds available to it to initiate the studies of fox and fur-bearer populations mandated by G.S. 113-291.4(e)."

§ 113-291.5. Regulation of dogs used in hunting; limitations on authority of Wildlife Resources Commission; control of dogs on game lands; control of dogs chasing deer; other restrictions. — (a) Except as provided in G.S. 113-291.4, in the area described below, the Wildlife Resources Commission may regulate the use of dogs taking wildlife with respect to seasons, times, and places of use. The area covered by this subsection is that part of the State in and west of the following counties or parts of counties: Rockingham; Guilford; that part of Alamance and Orange lying south of Interstate Highway 85; Chatham; that part of Wake lying south of N.C. Highway 98; Lee; Randolph; Montgomery; Stanly; Union; and that part of Anson lying west of N.C. Highway 742.

(b) In the area of the State lying east of that described in subsection (a), the Wildlife Resources Commission may not restrict or prohibit the use of dogs in hunting or the training of dogs, in season or out, except during the breeding and raising seasons for game during the period April 15 through June 15.

(c) On game lands, wildlife refuges, and public hunting grounds the Wildlife Resources Commission may regulate the possession and use of dogs and may impound dogs found running at large without supervision or, if unsupervised, without means of identification.

(d) The Wildlife Resources Commission may not by its regulations anywhere in the State restrict the number of dogs used in hunting or require that any particular breed of dog be used in hunting.

(e) It is unlawful to allow dogs not under the control of the owner or the individual in possession of the dogs to run or chase deer during the closed deer season.

(f) Nothing in this section is intended to require the leashing or confining of pet dogs. (1979, c. 830, s. 1.)

§ 113-291.6. Regulation of trapping. — (a) No one may take wild animals by trapping upon the land of another without having in his possession written permission issued and dated within the previous year by the owner of the land or his agent. This subsection does not apply to public lands on which trapping is not specifically prohibited, including tidelands, marshlands, and any other untitled land.

(b) No one may take wild animals by trapping with any steel-jaw, leghold, or conibear trap unless it:

- (1) Has a jaw spread of not more than seven and one-half inches.
- (2) Is horizontally offset with closed jaw spread of at least three sixteenths of an inch for a trap with a jaw spread of more than five and one-half inches. This subdivision does not apply if the trap is set in the water with quick-drown type of set.

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- (3) Is smooth edged and without teeth or spikes.
- (4) Has a weather-resistant permanent tag attached legibly giving the trapper's name and address.

If set on dry land with solid anchor, a trap may not have a trap chain longer than eight inches from trap to anchor unless fitted with a shock-absorbing device approved by the Wildlife Resources Commission, and in no event may a trap chain exceed two feet in length.

(c) No person may set or otherwise use a trap so that animals or birds when caught will be suspended. No hook of any type may be used to take wild animals or wild birds by trapping.

(d) Trap number 330 of the connibear type or size may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

- (1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.
- (2) In areas of tidal waters, the mean high water is considered covering water.
- (3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.
- (4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land.

(e) With respect to any lawfully placed trap of another set in compliance with the provisions of this section, no one without the express permission of the trapper may:

- (1) Remove or disturb any trap; or
- (2) Remove any fur-bearing animal from the trap.

This subsection does not apply to wildlife protectors or other law enforcement officers acting in the performance of their duties.

(f) Nothing in this section prohibits the use of steel- or metal-jaw traps by county or State public health officials or their agents to control the spread of disease when the use of these traps has been declared necessary by the Department of Human Resources.

(g) The Wildlife Resources Commission must include the trapping requirements of this section in its annual digest of hunting and trapping regulations provided to each person upon purchase of a license. (1977, c. 933, ss. 2, 7; 1979, c. 830, s. 1.)

§ 113-291.7. Regulation of bears; limited retention of local acts closing bear seasons. — Local acts closing the season on bears are exempted from the provisions of G.S. 113-133.1(b) until July 1, 1981. After that date any local acts setting a year-round closed season on bears which have not by their terms expired are temporarily retained until the Wildlife Resources Commission supersedes them by adopting regulations either opening a season in the county affected or carrying forward the closed-season provision. (1979, c. 830, s. 1.)

§ 113-292. Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species. — (a) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all fishing in inland fishing waters, and the taking of inland game fish in coastal fishing waters, with respect to:

- (1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
- (2) Seasons for taking fish;
- (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:

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- (1) The opening and closing of inland fishing waters, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Wildlife Resources Commission; and
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all inland fisheries resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Wildlife Resources Commission in carrying out its duties.

To the extent not in conflict with provisions enforced by the Department, the Wildlife Resources Commission may exercise the powers conferred in this subsection in coastal fishing waters pursuant to its regulation of inland game fish in such waters.

(c) The Wildlife Resources Commission is authorized to make such regulations pertaining to the acquisition, disposition, transportation, and possession of fish in connection with private ponds as may be necessary in carrying out the provisions of this Subchapter and the overall objectives of the conservation of wildlife resources.

(d) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict anywhere in the State the acquisition, importation, possession, transportation, disposition, or release into public or private waters or the environment of exotic zoological or botanical species or specimens that may create a danger to or an imbalance in the environment inimical to the conservation of wildlife resources. This subsection is not intended to give the Wildlife Resources Commission the authority to supplant, enact any conflicting regulations, or otherwise take any action inconsistent with that of any other State agency acting within its jurisdiction. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§ 113-293. Obstructing rivers or creeks; keeping open fishways in dams. —

(a), (b) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(c) It is unlawful for any person in inland fishing waters:

- (1) To set a net of any description across the main channel of any river or creek;
- (2) To erect so as to extend more than three fourths of the distance across any river or creek any stand, dam, weir, hedge, or other obstruction to the passage of fish;
- (3) To erect any stand, dam, weir, or hedge in any part of a river or creek required to be left open for the passage of fish; or,
- (4) Having erected any dam where the same was allowed, to fail to make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish.

The provisions of this section may not be construed to conflict in any way with the laws and regulations of any other agency with jurisdiction over the activity or subject matter in question. (Code, ss. 3387-3389; Rev., s. 2457; 1909, c. 466, s. 1; 1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., ss. 1878, 1974; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1951, c. 1045, s. 1; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§ 113-294. Specific violations. — (a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both.

Effective July 1, 1980, unless otherwise indicated.

(b) Any person who unlawfully sells, possesses for sale, or buys any bear, cougar (*Felis concolor*), deer, or wild turkey is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion.

(c) Any person who unlawfully takes, possesses, or transports any bear, cougar (*Felis concolor*), or wild turkey is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion.

(d) Any person who unlawfully takes, possesses, or transports any antlerless deer is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than one hundred dollars (\$100.00) in addition to such other punishment the court may impose in its discretion.

(e) Any person who unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion.

(f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver, or violates any regulation of the Wildlife Resources Commission adopted to protect beavers, is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(g) Any person who unlawfully takes wild animals or birds from or with the use of a vessel equipped with a motor or with motor attached is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both.

(h) Any person who wilfully makes any false or misleading statement in order to secure for himself or another any license, permit, privilege, exemption, or other benefit under this Subchapter to which he or the person in question is not entitled is guilty of a misdemeanor punishable in the discretion of the court.

(i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(j) Any person who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(k) Any person who has been convicted of one of the fox offenses listed below who subsequently commits the same or another one of the fox offenses listed below is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted of a second or subsequent fox offense under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion. The fox offenses covered by this subsection are unlawfully selling, possessing for sale, or buying a fox; taking a fox by unlawful trapping; or

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unlawfully taking a fox with the aid of any electronic calling device. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141; 1963, c. 147; c. 697, ss. 2, 3 ½; 1965, c. 616; 1967, c. 729; c. 1149, s. 1; 1971, c. 423, s. 1; c. 524; c. 899, s. 2; 1973, c. 677; 1975, c. 216; 1977, c. 705, s. 4; c. 794, s. 2; c. 933, s. 8; 1979, c. 830, s. 1.)

§§ 113-295 to 113-300: Reserved for future codification purposes.

ARTICLE 22A.*Use of Poisons and Pesticides.***(Effective July 1, 1980, unless otherwise indicated.)**

§ 113-300.1. Use of poisons and pesticides in general. — No one may take any wild animal or bird with the use of any poison or pesticide except as provided in this Article. The taking of fish by the use of poison is governed by G.S. 113-261 and G.S. 113-262, and the prohibitions of those sections against the taking of the wildlife by poison apply unless specifically permitted under this Article. Otherwise, the Wildlife Resources Commission may, by regulations consistent with the North Carolina Pesticide Law of 1971 and the Structural Pest Control Act of 1955, regulate, prohibit, or restrict the use of poisons or pesticides upon or severely affecting wildlife resources. (1979, c. 830, s. 1.)

Editor's Note. — This Article is set out as enacted by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective Aug.

1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-300.2. Declaring wild animal or bird a pest; concurrence of Wildlife Resources Commission required before poison or pesticide may be used. — (a) When there is a factual basis for the declaration, any wild animal or bird may be declared a pest by:

- (1) The Commissioner of Agriculture under the Structural Pest Control Act of North Carolina of 1955, as amended, in Article 4C of Chapter 106 of the General Statutes, in accordance with any regulations or restrictions imposed by the Structural Pest Control Committee; or
- (2) The Pesticide Board under the North Carolina Pesticide Law of 1971, as amended, in Article 52 of Chapter 143 of the General Statutes.

(b) When a wild animal or bird is declared a pest, the Commissioner of Agriculture or the Pesticide Board, as the case may be, must notify the Wildlife Resources Commission in writing of the action taken; the areas in which the declaration is effective; the type, amount, and mode of application of any poison or pesticide proposed for use against the pest; and other information pertinent to the declaration.

(c) Upon receiving notification under subsection (b), the Wildlife Resources Commission may:

- (1) Hold a timely public hearing on the question whether it should concur in the declaration that the wild animal or bird is a pest and should be open to taking with the type or types of poison or pesticide specified or authorized in the notice, in the areas and under the circumstances specified. After holding the public hearing the Wildlife Resources Commission must decide, within 60 days after receiving the notice

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under subsection (b), whether it concurs or refuses to concur in the declaration that the wild animal or bird is a pest.

- (2) Take no action. In this event, 60 days after the Wildlife Resources Commission receives notice of the declaration under subsection (b), the concurrence of the Wildlife Resources Commission will occur automatically.

(d) Upon the concurrence of the Wildlife Resources Commission in the declaration under subsection (b), the wild animal or bird may be taken with the use of any poison or pesticide specified in the notice in accordance with applicable restrictions in statutes and regulations and in accordance with any special restrictions imposed by the Commissioner of Agriculture, the Structural Pest Control Committee, or the Pesticide Board. If the Wildlife Resources Commission refuses to concur, no poison or pesticide may be used to take the wild animal or bird.

(3) After holding a public hearing on the subject, the Wildlife Resources Commission may rescind its concurrence to a declaration under subsection (b) or grant its concurrence previously withheld.

(f) With the approval of the Structural Pest Control Committee or the Pesticide Board, as the case may be, the Wildlife Resources Commission may grant a qualified concurrence to a declaration, imposing further restrictions as to the use of poison or pesticide in taking the wild animal or bird in question. (1979, c. 830, s. 1.)

§ 113-300.3. Penalties for violations of Article; repeated offenses. — (a) Each day in which poisons or pesticides are used unlawfully in taking wild animals or birds constitutes a separate offense.

(b) Any taking of a wild animal or bird in wilful violation of this Article or in wilful violation of any restrictions imposed by the Commissioner of Agriculture, the Structural Pest Control Committee, the Pesticide Board, or the Wildlife Resources Commission is punishable under G.S. 113-262(a). For the purposes of prosecutions under that subsection, the term "poison" includes pesticides.

(c) Any person taking a wild animal or bird declared a pest with the use of poison or pesticide who neglects to observe applicable restrictions imposed by the Commissioner of Agriculture, the Structural Pest Control Committee, the Pesticide Board, or the Wildlife Resources Commission is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine or not more than one hundred dollars (\$100.00), imprisonment not to exceed 30 days, or both. (1979, c. 830, s. 1.)

ARTICLE 23.*Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.***(Effective July 1, 1980, unless otherwise indicated.)**

§ 113-301: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons

exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and

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termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the

conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and regulations. — (a) The Wildlife Resources Commission must prepare and distribute to license agents informational materials relating to hunting, fishing, trapping, and boating laws and regulations administered by the Wildlife Resources Commission. The materials furnished an agent should be appropriate to the types of licenses he customarily handles, and in a quantity reasonably anticipated to be sufficient to meet the needs of licensees obtaining licenses from the agent.

(b) In issuing new licenses and permits from the Raleigh office by mail, the Wildlife Resources Commission must generally inform the licensee or permittee of governing provisions of law and regulations applicable to the type of license or permit secured. In issuing renewal licenses and permits by mail, the Wildlife Resources Commission must inform the licensee or permittee of any substantial changes in the law or regulations which may affect the activities of the licensee or permittee.

(c) After adopting regulations which impose new restrictions upon the activities of members of the public who do not normally hold licenses or permits to engage in the activity in question, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions. These steps may include press releases to the media, informing local authorities, and other forms of communication that give promise of reaching the segment of the public affected.

(d) After adopting new restrictions on hunting, fishing, trapping, or boating at a time other than when usual annual changes in the regulations affecting those activities are adopted, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions in a manner designed to reach persons who may be affected. (1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are

effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-302. Prima facie evidence provisions. — (a) Except as provided below, possession of game or game fish in any hotel, restaurant, cafe, market, or store, or by any produce dealer, constitutes prima facie evidence of possession for the purpose of sale. This subsection does not apply to:

- (1) Possession of propagated game birds or hatchery-reared trout that is in accordance with licensing requirements and wrapping or tagging provisions that may apply; or
- (2) Game or game fish brought in by patrons in accordance with G.S. 113-276(i).

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(b) The flashing or display of any artificial light between a half hour after sunset and a half hour before sunrise in any area which is frequented or inhabited by wild deer by any person who has accessible to him a firearm, crossbow, or other bow and arrow constitutes prima facie evidence of taking deer with the aid of an artificial light. This subsection does not apply to the headlights of any vehicle driven normally along any highway or other public or private roadway. (1965, c. 957, s. 2; 1979, c. 830, s. 1.)

§ 113-302.1. Inspection of licensed or commercial premises; authority to secure inspection warrants. — (a) Protectors are authorized to enter and make a reasonable inspection at an appropriate time of day of any premises in which a person subject to administrative control under G.S. 113-276.2 conducts his operations to determine whether any wildlife on the premises is possessed in accordance with applicable laws and regulations, required records are being kept, and other legal requirements are being observed. It is an appropriate time of day for inspection if the establishment is open for business or if a proprietor or employee is on the premises.

(b) In cases not controlled by subsection (a), protectors who believe that wildlife may be on the premises of any public refrigeration storage plant, meat shop, store, produce market, hotel, restaurant, or other public food-storage or eating place may request permission to enter the nonpublic areas of the premises to make a reasonable inspection to determine whether any wildlife on the premises is possessed in accordance with applicable laws and regulations. If the person in charge of the premises refuses the inspection request of a protector, he is authorized to procure and execute an administrative search warrant issued under the terms of Article 4A of Chapter 15 of the General Statutes or under any successor legislation.

(c) In cases controlled by subsection (a), an administrative search warrant may be secured in the protector's discretion or if case law requires it. Nothing in this section is intended to prevent a lawful search of premises, with or without a search warrant under Chapter 15A of the General Statutes, when the circumstances so justify. (1979, c. 830, s. 1.)

§ 113-303. Arrest, service of process and witness fees of protectors. — All arrest fees and other fees that may be charged in any bill of costs for service of process by protectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the appearance of a protector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any protector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-304. Reciprocal agreements by Wildlife Resources Commission. — The Wildlife Resources Commission is empowered to make reciprocal agreements with other jurisdictions respecting the matters governed in this Subchapter. Pursuant to such agreements the Wildlife Resources Commission may by regulation modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-305. Cooperative agreements by Wildlife Resources Commission. — The Wildlife Resources Commission is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this Subchapter. Pursuant to such agreements the Wildlife Resources Commission may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other

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actions that may be required by virtue of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-306. Administrative authority of Wildlife Resources Commission; disposition of license funds; delegation of powers; injunctive relief. — (a) In the overall best interests of the conservation of wildlife resources, the Wildlife Resources Commission may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish wildlife refuges, management areas, and boating and fishing access areas, either alone or in cooperation with others; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of Chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Wildlife Resources Commission be selected:

- (1) With regard to the overall public interest that may result; and
- (2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Wildlife Resources Commission from the sale of licenses authorized by this Subchapter must be consolidated and placed in the Wildlife Resources Fund.

(c) The Wildlife Resources Commission may, within the terms of policies set by regulation, delegate to the Executive Director all administrative powers granted to it.

(d) The Wildlife Resources Commission is hereby authorized and directed to develop a plan and policy of wildlife management for all lands owned by the State of North Carolina which are suitable for this purpose. The Division of State Property and Construction of the Department of Administration shall determine which lands are suitable for the purpose of wildlife management. Nothing in the wildlife management plan shall prohibit, restrict, or require the change in use of State property which is presently being used or will in the future be used to carry out the goals and objectives of the State agency utilizing such land. Each plan of wildlife management developed by the Wildlife Resources Commission shall consider the question of public hunting; and whenever and wherever possible and consistent with the primary land use of the controlling agency, public hunting shall be allowed under cooperative agreement with the Wildlife Resources Commission. Any dispute over the question of public hunting shall be resolved by the Division of State Property and Construction.

(e) Subject to any policy directives adopted by the members of the Wildlife Resources Commission, the Executive Director in his discretion may institute an action in the name of the Wildlife Resources Commission in the appropriate court for injunctive relief to prevent irreparable injury to wildlife resources or to prevent or regulate any activity within the jurisdiction of the Wildlife Resources Commission which constitutes a public nuisance or presents a threat to public health or safety. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1977, c. 759; 1979, c. 830, s. 1.)

§ 113-307. Adoption of federal laws and regulations. — To the extent that the Wildlife Resources Commission is granted authority under this Chapter or under any other provision of law, including Chapter 75A of the General Statutes, over subject matter as to which there is concurrent federal jurisdiction, the Wildlife Resources Commission in its discretion may by reference in its

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regulations adopt relevant provisions of federal law and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Wildlife Resources Commission may provide for an automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Wildlife Resources Commission. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-307.1. Legislative assent to specific federal acts.— (a) The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 Stat. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this subsection shall be construed as conveying the ownership of wildlife from the State of North Carolina or permit the trapping, hunting, or transportation of any game animals, game or nongame birds, or fish by any person, including any agency, department, or instrumentality of the United States or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of this Subchapter and its implementing regulations. Provided, that the provisions of G.S. 113-39 apply with respect to licenses.

Any person, including employees or agents of any department or instrumentality of the United States, violating the provisions of this subsection is guilty of a misdemeanor punishable in the discretion of the court.

(b) The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes", approved September 2, 1937 (Public Law 415, 75th Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Wildlife Resources Commission.

(c) Assent is hereby given to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes", approved August 9, 1950 (Public Law 681, 81st Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be directed for any other purpose than the administration of the

Wildlife Resources Commission and for the protection, propagation, preservation, and investigation of fish and wildlife.

(d) If as a precondition to receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Wildlife Resources Commission is directed to make such arrangements for separate accounting within the Wildlife Resources Fund, or for separate funding, as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. This subsection applies whether the cooperative program is with a public or private agency and whether the Wildlife Resources Commission acts alone on behalf of the State or in conjunction with some other State agency. (1915, c. 205; C. S., s. 2099; 1939, c. 79, ss. 1, 2; 1979, c. 830, s. 1.)

ARTICLE 23B.

Fishermen's Economic Development Program.

§§ 113-315.20 to 113-315.24: Reserved for future codification purposes.

ARTICLE 23C.

North Carolina Seafood Industrial Park Authority.

§ 113-315.25. Creation of Authority; membership; appointment; terms and vacancies; officers; meetings and quorum; compensation. — (a) There is hereby created the North Carolina Seafood Industrial Park Authority. It shall be governed by a board composed of 11 members to be appointed as follows. The Board is hereby designated as the Authority.

(b) Nine members shall be appointed by the Governor.

The initial appointments by the Governor shall be made on or after the date of ratification, four terms to expire July 1, 1981; four terms to expire July 1, 1983; and one term to expire July 1, 1985. Thereafter, at the expiration of each stipulated term of office all appointments shall be for a term of four years. The members of the Authority shall be selected as follows: one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of the village or town where the Seafood Industrial Park is located; one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of the county where the Seafood Industrial Park is located; two members be appointed to the Authority for terms which expire July 1, 1981, from the area of the State where the Seafood Industrial Park is located; five members (two terms expire July 1, 1981; two terms expire July 1, 1983; and one term expires July 1, 1985) be appointed to the Authority who are residents of the State at large and insofar as practicable shall represent all the other sections of the State. At the expiration of the terms for the representatives as stated above the Governor shall use his discretion on reappointments. However, there shall be no less than five members of the Authority from coastal counties and there should be at least one member on the Authority from each village or town in which the Seafood Parks are located. Any vacancy occurring in the membership of the Authority shall be filled by the appointing authority for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

(c) The President of the Senate shall appoint one Senator for a two-year term.

(d) The Speaker of the House shall appoint one Representative for a two-year term.

(e) The Governor shall annually appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority.

(f) No person shall serve on the Authority for more than two complete consecutive terms.

(g) The Authority shall meet once in each 90 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority, who are not members of the General Assembly, shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5 and G.S. 138-6. The members of the Authority who are members of the General Assembly shall not receive per diem but shall receive travel and subsistence at the rates set out in G.S. 120-3.1. (1979, c. 459, s. 1.)

Editor's Note. — Session Laws 1979, c. 459, s. 16, provides: "North Carolina Seafood Industrial Park Authority transfer. The North Carolina Seafood Industrial Park Authority, as contained

in this Article, will take title to, develop and manage seafood industrial parks which henceforth has been the responsibility of several State agencies."

§ 113-315.26. Personnel. — The Secretary of Commerce shall appoint such management personnel as deemed necessary who shall serve at the pleasure of the Secretary of Commerce. The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Secretary of Commerce shall have the power to appoint, employ and dismiss such number of employees as he may deem necessary to accomplish the purposes of this Article subject to the availability of funds. The power to appoint, employ and dismiss personnel, and to fix the number thereof, may be delegated to one or more of the management personnel upon such terms and subject to such restrictions and limitations as the Secretary of Commerce may deem proper. The compensation of such employees shall be fixed by the Secretary of Commerce. It is recommended that, to the fullest extent possible, the Secretary of Commerce consult with the Authority on matters of personnel. (1979, c. 459, s. 2.)

§ 113-315.27. Executive committee. — 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 specifically authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected. (1979, c. 459, s. 3.)

§ 113-315.28. Purposes of Authority. — Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the seafood industrial parks within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation as such seafood industrial parks of watercraft and facilities thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes;

(1) To develop and improve the Wanchese Seafood Industrial Park, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of seafood

commerce from and to any place or places in the State of North Carolina and other states and foreign countries;

- (2) To acquire, construct, equip, maintain, develop and improve the port facilities at said parks and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government;
- (3) To foster and stimulate the shipment of seafood commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;
- (4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said seafood harbors;
- (5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority;
- (6) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of seafood industrial parks of the State of North Carolina, and to increase the movement of waterborne seafood commerce, foreign and domestic, to, through, and from said seafood industrial parks.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the seafood possibilities of the State of North Carolina. (1979, c. 459, s. 4.)

§ 113-315.29. Powers of Authority. — In order to enable it to carry out the purposes of this Article, 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 seafood industrial park or port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the seafood industries;
- (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 Article, all or any of them;
- (4) 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;
- (5) Be authorized and empowered to pay all necessary costs and expenses involved 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 Article;
- (6) 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 subdivisions 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;

- (7) 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;
- (8) 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;
- (9) Be authorized and empowered to do any and all other acts and things in this Article authorized or required to be done, whether or not included in the general powers in this section mentioned; and
- (10) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Article. (1979, c. 459, s. 5.)

§ 113-315.30. Approval of acquisition and disposition of real property. —

Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina Seafood Industrial Park Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "Seafood Industrial Park Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina Seafood Industrial Park Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1979, c. 459, s. 6.)

§ 113-315.31. Issuance of bonds. — (a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue with the approval of the Advisory Budget Commission negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) Such bonds and the income thereof shall be exempt from all taxation within the State.

(e) Notwithstanding any other provisions of this Article, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Authority and with the approval of the Local Government Commission. The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this act. The North Carolina Seafood Industrial Park Authority shall determine when a bond issue is indicated. The Authority shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys. (1979, c. 459, s. 7.)

§ 113-315.32. Power of eminent domain. — For the acquiring of rights-of-way and property necessary for the construction of wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1979, c. 459, s. 8.)

§ 113-315.33. Exchange of property; removal of buildings, etc. — The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for seafood industrial park development, under the authorization of this Article. (1979, c. 459, s. 9.)

§ 113-315.34. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police. — (a) The jurisdiction of the Authority in any of said harbors or seaports within the State for the shipment of seafood commerce shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties

owned by or under the control of the North Carolina Seafood Industrial Park Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The North Carolina Seafood Industrial Park Authority is hereby authorized to make such reasonable rules, regulations, and adopt such additional ordinances with respect to the use of the streets, alleys, driveways and to the establishment of parking areas on the properties of the Authority and relating to the safety and welfare of persons using the property of the Authority. All rules, regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Authority and printed and copy of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina and the Authority shall cause to be posted, at appropriate places on the properties of the Authority, notice to the public of applicable rules, regulations and ordinances as may be adopted under the authority of this subsection. Any person violating any such rules, regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not exceeding fifty dollars (\$50.00) or imprisonment not to exceed 30 days.

(d) The Secretary of Commerce is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have within the jurisdiction of the Authority all the powers of policemen of incorporated towns. Such policemen shall have the power of arrest of persons committing violations of State law or any rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11. (1979, c. 459, s. 10.)

§ 113-315.35. Annual audit; copies to be furnished. — At least once in each year the State Auditor shall cause to be made a detailed audit of all moneys received and disbursed by the Authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the Authority. A copy of the said audit shall be furnished to each member of the governing body of the said Authority and to the officers thereof and to the Governor and the Attorney General. (1979, c. 459, s. 11.)

§ 113-315.36. Purchase of supplies, material and equipment. — All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina Seafood Industrial Park Authority. (1979, c. 459, s. 12.)

§ 113-315.37. Liberal construction of Article. — It is intended that the provisions of this Article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1979, c. 459, s. 13.)

§ 113-315.38. Warehouses, wharves, etc., on property abutting navigable waters. — The powers, authority and jurisdiction granted to the North Carolina Seafood Industrial Park Authority under this Article and Chapter shall not be

construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1979, c. 459, s. 14.)

§ 113-315.39. Taxation. — The property of the Authority shall not be subject to any taxes or assessments thereon. (1979, c. 459, s. 15.)

ARTICLE 24.

Miscellaneous Transitional Provisions.

(Effective July 1, 1980, unless otherwise indicated.)

§ 113-316. General statement of purpose and effect of revisions of Subchapter IV made in 1965 and 1979. — To clarify the conservation laws of the State and the authority and jurisdiction of the Department of Natural Resources and Community Development and the North Carolina Wildlife Resources Commission: commercial fishing waters are renamed coastal fishing waters and the Department is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations and marine fishing and fisheries regulated by the Department are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; laws relating to the conservation of wildlife resources administered by the Wildlife Resources Commission are consolidated and revised; and the enforcement authority of marine fisheries inspectors and wildlife protectors is clarified, including the authority of wildlife protectors over boating and other activities other than conservation within the jurisdiction of the Wildlife Resources Commission. (1965, c. 957, s. 1; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are

effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-317: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date

of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent

licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts

and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§§ 113-318 to 113-320: Repealed by Session Laws 1973, c. 1262, s. 28.

§§ 113-321, 113-322: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§§ 113-323 to 113-330: Reserved for future codification purposes.

ARTICLE 25.

[Reserved.]

§§ 113-331 to 113-377: Reserved for future codification purposes.

ARTICLE 26.

§§ 113-377.1 to 113-377.7: Transferred to §§ 113-252 to 113-258 by Session Laws 1965, c. 957.

Chapter 113A.

Pollution Control and Environment.

Article 4.

Sedimentation Pollution Control Act of 1973.

Sec.

- 113A-54. Powers and duties of the Commission.
 113A-57. Mandatory standards for land-disturbing activity.
 113A-61. Approval of plans.

Article 6.

North Carolina Trails System.

- 113A-87. Authority to designate trails.

Article 7.

Coastal Area Management.

Part 4. Permit Letting and Enforcement.

- 113A-118. Permit required.
 113A-122. Permits under quasi-judicial procedures.

Sec.

- 113A-125. Transitional provisions.

Article 9.

Land Policy Act.

- 113A-153. North Carolina Land Policy Council.

Article 12.

Primary Forest Product Assessment Act.

- 113A-197 to 113A-201. [Reserved.]

Article 13.

Toxic Substances Task Force and Incident Response Procedures.

- 113A-202. Toxic Substances Task Force; membership.
 113A-203. Incident response procedures and coordination.

ARTICLE 3.

Natural and Scenic Rivers System.

§ 113A-30. Short title.

Declaratory Judgment Premature. — None of the plaintiffs seeking a declaratory judgment that Article 2 of Chapter 113 and Article 3 of Chapter 113A are unconstitutional and praying that defendants be permanently enjoined from adopting a "Master Plan" for the Eno River State Park had as yet been directly and adversely affected by the statutes they sought to challenge, and the plaintiffs failed to show the existence of a genuine controversy cognizable under the Declaratory Judgment Act, where no

condemnation proceeding affecting any lands of the plaintiffs had as yet been instituted, and all that had occurred was that employees of the Division of Parks and Recreation had made initial alternative planning proposals for a State park which contemplated ultimate acquisition of certain lands of the plaintiffs for park purposes. *Barbour v. Little*, 37 N.C. App. 686, 247 S.E.2d 252, cert. denied, 295 N.C. 733, 248 S.E.2d 862 (1978).

§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.

Editor's Note. —

For a note entitled, "The Conflict Over the New River, and the Test Case for the Wild and

Scenic Rivers Act: *North Carolina v. FPC*," see 9 N.C. Cent. L.J. 192 (1978).

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

Repeal of Article. — Session Laws 1977, c. 712, s. 2, was amended by Session Laws 1979, c. 744, s. 1, so as to postpone the repeal of this Article to July 1, 1981.

§ 113A-54. Powers and duties of the Commission.

(b) The Commission shall develop and adopt and shall revise as necessary from time to time, rules and regulations for the control of erosion and sedimentation resulting from land-disturbing activities. The Commission shall adopt or revise its rules and regulations in accordance with the rulemaking procedures set forth in Article 2 of Chapter 150A of the General Statutes.

- (1) Notice of any hearing shall be given not less than 60 days before the date of the hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action that the Commission proposes to take. The notice shall either include details of the proposed action, or where the proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of the detailed proposed action can be obtained upon request from the Commission.
- (2) Any such notice shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the eastern, western and central regions of the State.
- (3) Any person desiring to be heard at any public hearing shall give notice thereof in writing to the Commission on or before the date set for the hearing. The Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any public hearing. The Commission shall permit anyone who so desires to file a written argument or other statement with it in relation to any proposed action at any time within 30 days following the conclusion of any public hearing or within any additional time as it may allow by notice given as prescribed in this section.

When the Commission has completed hearings and considered the submitted evidence and arguments with respect to any proposed action pursuant to this section, it shall adopt its final action with respect thereto and shall publish such final action as part of the official regulations of the Department.

(1979, c. 922, s. 2.)

Editor's Note. —

The 1979 amendment rewrote subsection (b).

As only subsection (b) was changed by the amendment, the other subsections are not set out.

§ 113A-57. Mandatory standards for land-disturbing activity. — No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one contiguous acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and

development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be adopted by regulation by the Commission. (1973, c. 392, s. 8; c. 1417, s. 5; 1975, c. 847, s. 2; 1979, c. 564.)

Editor's Note. —

The 1979 amendment substituted everything following "uncovered" in subdivision (3) for a provision requiring sufficient ground cover to restrain erosion to be planted, within 30 working days, on any portion of the tract which was not

under active construction, and which would not form the basin of a reservoir to be later inundated.

As subdivisions (1) and (2) were not changed by the amendment, they are not set out.

§ 113A-61. Approval of plans.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion control plan following the public hearing, the person submitting the erosion control plan shall be entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion control plans to designated employees of the Department, the Commission shall designate an erosion control plan review committee consisting of three members of the Commission. The person submitting the erosion control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion control plan to the erosion plan review committee of the Commission. Judicial review of the final action of the erosion plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

(1979, c. 922, s. 1.)

Editor's Note. — The 1979 amendment added the third, fourth, fifth and sixth sentences to subsection (c), and substituted "of the erosion plan review committee of the Commission" for "of the local government on the proposed plan"

near the beginning of the seventh sentence in subsection (c).

As only subsection (c) was changed by the amendment, the other subsections are not set out.

ARTICLE 6.

North Carolina Trails System.

§ 113A-87. Authority to designate trails. — The Department may establish and designate State scenic and recreation trails on lands administered by the Department; or on lands under the jurisdiction of a State department, political subdivision, or federal agency or private lands providing fee-simple title, or lesser estates, scenic easements, easements of surface ingress and egress running with the land or leases are obtained from landowners through which a State trail may pass. (1973, c. 670, s. 1; 1979, c. 6, s. 1.)

Editor's Note. — The 1979 amendment inserted "or federal agency" near the middle of this section.

ARTICLE 7.

Coastal Area Management.

Repeal of Article. —

Session Laws 1977, c. 712, was amended by Session Laws 1979, c. 744, so as to postpone the repeal of this Article to July 1, 1983.

Part 1. Organization and Goals.

§ 113A-100. Short title.

Editor's Note. —

For article analyzing and evaluating this Article in the light of the Federal Coastal Zone Management Act of 1972, see 53 N.C.L. Rev. 275 (1974).

For article, "The Coastal Area Management Act in the Courts: A Preliminary Analysis," see 53 N.C.L. Rev. 303 (1974).

For article, "A Legislative History of the Coastal Area Management Act," see 53 N.C.L. Rev. 345 (1974).

For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

The coastal counties constitute a valid legislative class for the purpose of addressing the special and urgent environmental problems found in the coastal zone. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The Coastal Area Management Act of 1974 is a general law which the General Assembly had

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

The Coastal Area Management Act of 1974 properly delegates authority to the Coastal Resources Commission to develop, adopt and amend State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The authority delegated to the Coastal Resources Commission is accompanied by adequate guiding standards in the form of legislative declarations of goals and policies, and procedural safeguards. The General Assembly properly delegated to the Commission the authority to prepare and adopt State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-101. Cooperative State-local program.

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

§ 113A-102. Legislative findings and goals.

Commission Has Been Given Adequate Guidelines. — The goals, policies and criteria outlined in this section and § 113A-113 provide the members of the Coastal Resources Commission with an adequate notion of the legislative parameters within which they are to operate in the exercise of their delegated powers. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683,

249 S.E.2d 402 (1978).

The declarations of legislative findings and goals, articulated in this section and the criteria for designating areas of environmental concern in § 113A-113 are as specific as the circumstances permit. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-103. Definitions.

The coastal counties constitute a valid legislative class for the purpose of addressing the special and urgent environmental problems found in the coastal zone. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

"Coastal Area." — The boundaries of the coastal area could not be formulated with mathematical exactness. The criterion ultimately chosen by the General Assembly to distinguish the salty coastal sounds from the fresh water coastal rivers which fed into the sounds was "the limit of seawater encroachment" on a given coastal river under normal conditions. The western boundary of the coastal zone as determined by use of the seawater encroachment criterion is reasonably related to the purpose of the act. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

The definition in subdivision (2) accurately reflects the unique geography of the coastal area. Adams v. North Carolina Dep't of Natural

& Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Inland Limits of Coastal Sounds Are Western Boundary of Coastal Zone. — The inland limits of the coastal sounds in effect constitute the western boundaries of the coastal zone for purposes of the act. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Jones and Pitt Counties Excluded. — Two counties, Jones and Pitt, were excluded from the act as the result of the General Assembly excluding from the coverage of the act all counties which adjoined a point of confluence and lay entirely west of said point. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

The slight extent of seawater encroachment into Jones and Pitt counties was of no significance to an accurate and reasonable definition of the coastal area. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-104. Coastal Resources Commission.

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

§ 113A-105. Coastal Resources Advisory Council.

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

Part 2. Planning Processes.

§ 113A-106. Scope of planning processes.

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

§ 113A-107. State guidelines for the coastal area.

Authority Properly Delegated. — The Coastal Area Management Act of 1974 properly delegates authority to the Coastal Resources Commission to develop, adopt and amend State guidelines for the coastal area. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

The authority delegated to the Coastal Resources Commission is accompanied by

adequate guiding standards in the form of legislative declarations of goals and policies, and procedural safeguards. The General Assembly properly delegated to the Commission the authority to prepare and adopt State guidelines for the coastal area. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Input and Review Provisions Guard against Arbitrary Commission Action. — The broad provisions in this section for input and review by groups representing all levels and types of agencies and interests provide a substantial curb against arbitrary and unreasoned action by the Coastal Resources Commission. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Commission Rules Subject to Review. — Pursuant to § 120-30.24 et seq., all rules adopted by the Coastal Resources Commission are subject to review by a permanent committee of the Legislative Research Commission known as the Administrative Rules Committee. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Construction with Administrative Procedure Act. — The mandatory provisions of the Administrative Procedure Act must be read as complementing the procedural safeguards in the Coastal Area Management Act of 1974 itself. *Adams v. North Carolina Dep't of Natural &*

Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Amendments to the State guidelines by the Coastal Resources Commission are considered administrative rulemaking under § 150A-10 and thus subject to the comprehensive additional safeguards contained in the Administrative Procedure Act. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Review of Coastal Resources Commission. — Under the "Sunset" legislation, entitled "Periodic Review of Certain State Agencies," § 143-34.10 et seq., the Coastal Resources Commission is subjected to review by the Governmental Evaluations Commission, §§ 143-34.16 and 143-34.17; to public hearings held by the Governmental Evaluations Commission, § 143-34.18; and to hearings, and recommendations of legislative committees, § 143-34.19. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-108. Effect of State guidelines.

The Coastal Area Management Act of 1974 properly delegates authority to the Coastal Resources Commission to develop, adopt and amend State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The authority delegated to the Coastal Resources Commission is accompanied by adequate guiding standards in the form of legislative declarations of goals and policies, and procedural safeguards. The General Assembly

properly delegated to the Commission the authority to prepare and adopt State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Purpose of State Guidelines. — The State guidelines are designed to facilitate State and local government compliance with the planning and permit-letting aspects of the act. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-109. County letter of intent; timetable for preparation of land-use plan.

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

§ 113A-110. Land-use plans.

Editor's Note. — For comment on public participation in local land use planning, see 53 N.C.L. Rev. 975 (1975).

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

§ 113A-111. Effect of land-use plan.

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

Part 3. Areas of Environmental Concern.

§ 113A-113. Areas of environmental concern; in general.

The Commission Has Been Given Adequate Guidelines. — The goals, policies and criteria outlined in § 113A-102 and this section provide the members of the Coastal Resources Commission with an adequate notion of the legislative parameters within which they are to operate in the exercise of their delegated powers. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The declarations of legislative findings and goals, articulated in § 113A-102 and the criteria for designating areas of environmental concern in this section are as specific as the circumstances permit. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-114. Designation of interim areas of environmental concern; notice of developments within such areas.

There was no justiciable controversy in a declaratory judgment action on the question of whether there was an unconstitutional taking of the plaintiffs' land as the result of the designation of their land as an interim area of environmental concern where, at the time the case was tried, the plaintiffs had no occasion to seek development permits, variances, or exemptions from coverage, and could only speculate as to the effect the act would have on the usefulness and value of their specific plots of

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

The designation of land as an interim area of environmental concern under this section does not subject development to a permit requirement; it merely requires the developer to give the state 60 days notice before undertaking the proposed activity. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-115. Designation of areas of environmental concern.

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

Part 4. Permit Letting and Enforcement.

§ 113A-118. Permit required.

(c) Permits shall be obtained from the Commission or its duly authorized agent, with a right to appeal a permit denial to the Commission pursuant to the quasi-judicial procedures provided in G.S. 113A-122. (1979, c. 253, s. 5.)

Editor's Note. —

The 1979 amendment substituted the present subsection (c) for one which read: "Under the quasi-judicial procedure provided for by G.S. 113A-122, the permit shall be obtained from the Commission."

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

The designation of land as an interim area of environmental concern under this section does not subject development to a permit requirement; it merely requires the developer to give the state 60 days notice before undertaking the proposed activity. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-120. Grant or denial of permits.

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

§ 113A-121. Permits for minor developments under expedited procedures.

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

§ 113A-122. Permits under quasi-judicial procedures. — (a) The procedure set forth in this section applies to all appeals of permit applications for major developments, as well as to permit applications for minor developments whose disposition was appealed under G.S. 113A-121(d). All permit appeals subject to this section shall be heard by the Commission.

(1979, c. 253, s. 6.)

Editor's Note. — The 1979 amendment inserted "appeals of" near the middle of the first sentence of subsection (a), and substituted "appeals" for "applications" near the beginning of the second sentence of subsection (a).

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

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

§ 113A-123. Judicial review.

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

§ 113A-125. Transitional provisions.

(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; and regulations concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Human Resources of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Human Resources pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and regulations issued by the Department of Human Resources pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, regulations, approvals or certificates issued by the Department of Human

Resources relating to septic tanks or water wells; oil or gas well regulations and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or 113A-61; and any permits, licenses, authorizations, regulations, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date. (1979, c. 299.)

Editor's Note. —

The 1979 amendment deleted "restricted-use pesticide permits issued pursuant to G.S. 143-440(b), pesticide applicator licenses issued pursuant to G.S. 143-452 for persons who may

apply pesticides within the coastal area" after "G.S. 87-88" near the middle of subsection (c).

As only subsection (c) was changed by the amendment, the other subsections are not set out.

§ 113A-126. Injunctive relief and penalties.

Trial Court Without Jurisdiction. — The trial court was without jurisdiction in a declaratory judgment action to pass upon the question of whether subsection (d)(1)c of this section authorizes warrantless searches in violation of the Fourth Amendment where the

plaintiffs did not allege that they had been subject to actual searches or that they had been fined for refusing access to investigators. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

ARTICLE 9.

Land Policy Act.

§ 113A-153. North Carolina Land Policy Council.

(b) Composition and Staff. —

(1) The Council shall consist of 14 principal members, designated as follows:

- a. Eight members shall be the principal officers of the State Departments of
 1. Administration
 2. Agriculture
 3. Cultural Resources
 4. Commerce
 5. Natural Resources and Community Development
 6. Revenue
 7. Human Resources
 8. Transportation.
- b. Two members shall be the Lieutenant Governor and a member of the Senate selected by the Lieutenant Governor.
- c. Two members shall be the Speaker of the House of Representatives and a member of the House selected by the Speaker.
- d. One member shall be an elected official selected by the North Carolina League of Municipalities and appointed by the Governor.
- e. One member shall be an elected official selected by the North Carolina Association of County Commissioners and appointed by the Governor.

- (2) Only principal members shall have a vote on matters before the Council, but an alternate appointed by a principal member may participate fully in discussion and deliberations.
 - (3) The Council shall be housed administratively in the Department of Natural Resources and Community Development, with the Secretary of Natural Resources and Community Development as chairman, and with such other officers and procedures as the Council deems necessary for the proper exercise of its responsibilities.
 - (4) Staff services to the Council shall be provided primarily by the Department of Natural Resources and Community Development, and, in addition, all departments of State government shall furnish personnel, information and research capability as may be required by the Council in the exercise of its responsibilities.
- (1979, c. 44, s. 1.)

Editor's Note. —

The 1979 amendment substituted "1. Administrator" for "1. Natural Resources and Community Development" in subdivision (1)a of subsection (b).

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

ARTICLE 12.

Primary Forest Product Assessment Act.

§§ 113A-197 to 113A-201: Reserved for future codification purposes.

ARTICLE 13.

Toxic Substances Task Force and Incident Response Procedures.

§ 113A-202 **Toxic Substances Task Force; membership.** — There is created within the Executive Department a State Task Force on Toxic Substances, consisting of one person designated by each of the following:

The Secretary of Administration

The Commissioner of Agriculture

The Secretary of Crime Control and Public Safety

The Secretary of Human Resources

The Secretary of Natural Resources and Community Development.

Additional permanent or temporary members may be added to the Task Force by Executive Order of the Governor. The designee of the Secretary of Crime Control and Public Safety (hereinafter "the Secretary") shall serve as Chairman of the Task Force. (1979, c. 981, s. 1.)

§ 113A-203. **Incident response procedures and coordination.** — (a) The Department of Crime Control and Public Safety shall coordinate the initial response of State agencies to incidents involving toxic or hazardous substances.

(b) Following the initial response to any incident the Secretary, in consultation with the State Task Force on Toxic Substances, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the incident. Pending an opportunity to consult with the Task Force, the Secretary may make interim lead-agency designations. In designating lead agencies the Secretary shall be governed by existing law, but where existing law does not clearly identify responsibility or exclusive responsibility for an incident, the Secretary shall make such designations as in his discretion he deems best.

(c) In addition to its functions under subsection (b) of this section, the State Task Force:

- (1) May recommend that the Governor by Executive Order create one or more local or regional task forces on incident response, which may include private individuals and local government personnel as well as State employees;
- (2) May study and recommend modifications of incident response procedures;
- (3) May study and make recommendations concerning local government involvement in incident response;
- (4) In consultation with the Department of Transportation may study and make recommendations concerning movement within the State of toxic or hazardous substances;
- (5) In consultation with the Department of Human Resources may study and make recommendations concerning disposal of and storage sites for toxic and hazardous substances;
- (6) May study and make recommendations concerning additions, deletions or substitutions of substances in the list of toxic substances contained in G.S. 14-284.2;
- (7) Upon the request of any of its members, or of the Governor, may study and make recommendations concerning the coordination of any toxic or hazardous substance function administered by that member's department with related functions not administered by that department.

(d) If any recommendations developed by the State Task Force require legislation, the State Task Force shall promptly communicate those recommendations to the General Assembly.

(e) The Secretary may request that the Governor adopt and publish an Executive Order concerning the response to any incident, including the designation of a lead agency or lead agencies. (1979, c. 981, s. 1.)

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 1.

Energy Policy Council.

Sec.

113B-3. Composition of Council; appointments; terms of members; qualifications.

Sec.

113B-4. Chairman of Council; replacement; reimbursement of members.

113B-9. Emergency Energy Program; components.

ARTICLE 1.

Energy Policy Council.

§ 113B-3. Composition of Council; appointments; terms of members; qualifications. — (a) The Energy Policy Council shall consist of 16 members to be appointed as follows:

- (1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
- (2) Two members of the North Carolina Senate to be appointed by the President of the Senate;
- (3) Seven public members who are citizens of the State of North Carolina to be appointed by the Governor;
- (4) The chairman of the North Carolina Utilities Commission, the Secretary of the Department of Natural Resources and Community Development, the Commissioner of Agriculture, the Secretary of Commerce and the Secretary of Administration or their designees from their respective departments.

(1979, c. 422.)

Editor's Note. —

The 1979 amendment substituted "16" for "15" in the introductory sentence of subsection (a) and added "and the Secretary of Administration or their designees from their

respective departments" at the end of subdivision (4) of subsection (a).

As subsections (b) and (c) were not changed by the amendment, only subsection (a) is set out.

§ 113B-4. Chairman of Council; replacement; reimbursement of members.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5. (1975, c. 877, s. 4; 1979, c. 514, s. 1.)

Editor's Note. — The 1979 amendment deleted the former second sentence of subsection (c), which read: "Funds for said purpose shall be paid from the Contingency and Emergency Fund."

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 113B-9. Emergency Energy Program; components.

(j) The Council shall update said program upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(1979, c. 514, s. 2.)

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.

114-2. Duties.

114-4.2D. Employment of attorney for Energy
Division of Department of
Commerce.

Article 4.

State Bureau of Investigation.

Sec. "

114-19.1. Fees for performing certain
background investigations.

ARTICLE 1.

Attorney General.

§ 114-1. Creation of Department of Justice under supervision of Attorney General.

Editor's Note. —

For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

§ 114-2. Duties. — It shall be the duty of the Attorney General:

(4) To consult with and advise the prosecutors, when requested by them, in all matters pertaining to the duties of their office.
(1979, c. 107, s. 9.)

Editor's Note. —

The 1979 amendment substituted "prosecutors" for "solicitors" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

Applied in *Nash County Bd. of Educ. v. Biltmore Co.*, 464 F. Supp. 1027 (E.D.N.C. 1978).

§ 114-4.2D. Employment of attorney for Energy Division of Department of Commerce. — The Attorney General shall assign an attorney on his staff to work full time with the Energy Division of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned to him by the Attorney General. (1979, c. 942.)

Editor's Note. — Session Laws 1979, c. 942, s. 2, makes this section effective July 1, 1979.

ARTICLE 4.

State Bureau of Investigation.

§ 114-19.1. Fees for performing certain background investigations. — When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of

Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this subsection shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer.

Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19 and other applicable statutes. (1979, c. 816.)

Editor's Note. — Session Laws 1979, c. 816, s.

2, makes this section effective July 1, 1979.

Chapter 115.

Elementary and Secondary Education.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 2.

The State Board of Education.

Sec.

115-11. Powers and duties generally.

Article 5.

County and City Boards of Education.

- 115-35.1. Powers of county and city boards to regulate parking of motor vehicles.
- 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.
- 115-53.1. Defense of board of education member and employees.

Article 7A.

Community Schools Act.

- 115-73.11. Community schools advisory councils; duties; responsibilities; membership.

SUBCHAPTER VI. SCHOOL PROPERTY.

Article 16.

State Insurance of Public School Property.

- 115-135. Public School Insurance Fund; decrease of premiums when fund reaches 5% of total insurance in force.

SUBCHAPTER VII. EMPLOYEES.

Article 17.

Principals' and Teachers' Employment and Contracts.

- 115-142. System of employment for public school teachers.
- 115-142.4. Sports medicine and emergency paramedical program.
- 115-146.1. Scope of duty of teachers to include some medical care.
- 115-147. Suspension or expulsion of pupils.

Article 18.

Certification and Salaries of Employees; Worker's Compensation.

- 115-157. Pay of school officials and other employees.
- 115-159.1. Salary of teacher injured during episode of violence.
- 115-160. Workers' Compensation Act applicable to school employees.

SUBCHAPTER VIII. PUPILS.

Article 20.

General Compulsory Attendance Law.

Sec.

- 115-166. Parent or guardian required to keep child in school; exceptions.

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

Article 22.

School Buses.

- 115-183. Use and operation of school buses.
- 115-183.1. Use of school buses by senior citizen groups.
- 115-185. School bus drivers; monitors; safety assistants.
- 115-192. Payment of awards to school bus drivers pursuant to the Workers' Compensation Act.

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

- 115-198.2. Standard class duration.
- 115-204.1. School health education program to be developed and administered.

Article 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

- 115-243, 115-244. [Repealed.]

Article 32.

Nonpublic Schools.

- 115-257.1 to 115-257.5. [Reserved.]

Article 32A.

Private Church Schools and Schools of Religious Charter.

- 115-257.6. Policy.
- 115-257.7. Attendance; health and safety regulations.
- 115-257.8. Standardized testing requirements.
- 115-257.9. High school competency testing.
- 115-257.10. Voluntary participation in the State programs.
- 115-257.11. New school notice requirements; termination.
- 115-257.12. Duly authorized representative.
- 115-257.13. Requirements exclusive.
- 115-257.14 to 115-257.18. [Reserved.]

Article 32B.**Qualified Nonpublic Schools.**

- Sec.
- 115-257.19. Qualification of nonpublic schools.
- 115-257.20. Attendance; health and safety regulations.
- 115-257.21. Standardized testing requirements.
- 115-257.22. High School Competency Testing.
- 115-257.23. Voluntary participation in the State programs.
- 115-257.24. New school notice requirements; termination.
- 115-257.25. Duly authorized representative.
- 115-257.26. Requirements exclusive.

Article 38D.**Regional Educational Training Centers.**

115-315.27 to 115-315.31. [Reserved.]

Article 38E.**North Carolina School of Science and Mathematics.**

- Sec.
- 115-315.32. Establishment of North Carolina School of Science and Mathematics.
- 115-315.33. Board of Trustees; appointments; terms of office.
- 115-315.34. Budget; preparation; submission.

SUBCHAPTER XIII. SPECIAL EDUCATION.**Article 46.****Nondiscrimination in Education.**

- 115-374. Disciplinary suspensions.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.**ARTICLE 2.***The State Board of Education.*

§ 115-11. Powers and duties generally. — The powers and duties of the State Board of Education are defined as follows:

- (20) Noncertified Personnel Position Evaluation Descriptions. — The board is authorized and directed to develop position evaluation descriptions covering those positions in local education agencies for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this section 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 section.
- (21) 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, property and cost clerks, aides, 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.
- 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 county or city board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations. (1955, c. 1372, art. 2, s. 2; 1957, c. 541,

s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935.)

Editor's Note. —

The first 1979 amendment added subdivision (20).

The second 1979 amendment, effective July 1, 1979, added subdivision (21).

As the other subdivisions were not changed by the 1979 amendment, only the introductory language and subdivision (20) are set out.

ARTICLE 5.

County and City Boards of Education.

§ 115-19. How elected.

Local Modification. — Pitt: 1979, c. 856, amending 1971, c. 360.

By virtue of Session Laws 1979, c. 322, Montgomery should be stricken from the bound volume.

§ 115-27. Board a body corporate.

Board of County Commissioners Not Authorized to Devise and Fund School for Dyslexic Children, Absent Prior School Board Action. — Since, under the scheme for public education devised by the General Assembly, the board of county commissioners is empowered to appropriate funds only for items that are included by the board of education in its annual school budget, the board of county commissioners, absent statutory authority, cannot on its own initiative devise and fund

programs for the school system. Therefore, a program of aid for the Dyslexia School of North Carolina devised and funded by the Gaston County Board of Commissioners on its own initiative and made directly to the school by that board was not authorized under the statutory scheme for public education adopted by the General Assembly. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

Stated in *Nash County Bd. of Educ. v. Biltmore Co.*, 464 F. Supp. 1027 (E.D.N.C. 1978).

§ 115-31. Suits and actions.

Applied in *Nash County Bd. of Educ. v. Biltmore Co.*, 464 F. Supp. 1027 (E.D.N.C. 1978).

§ 115-34. Appeals to board of education and to superior court.

No State Statute Requires Hearing Prior to Discharge of Cafeteria Personnel. — No General Statute of North Carolina specifically requires that a hearing be afforded individuals employed as cafeteria workers or managers in public schools prior to their discharge from employment. *Presnell v. Pell*, 39 N.C. App. 538, 251 S.E.2d 692 (1979).

By Failing to Exhaust Administrative Remedies, Plaintiff Presented the Trial Court with No Basis for Jurisdiction under This Section. — Where the plaintiff chose to initiate

her action for wrongful discharge by filing a complaint in superior court instead of pursuing the procedure set forth in this section and later appealing an adverse decision to the superior court, she failed to pursue her exclusive administrative remedy and appeal therefrom, and her complaint presented no basis under this section for the appellate jurisdiction of the trial court. *Presnell v. Pell*, 39 N.C. App. 538, 251 S.E.2d 692 (1979).

However, United States Constitution Requires Prior Hearing, and Does Not Require

Exhaustion of Remedies. — Where the plaintiff alleged that she was discharged from employment by virtue of false accusations that she had brought liquor into the public school in which she was employed and had dispensed it to other employees of the county in the very area in which she worked as cafeteria manager, the addition of her allegation that she was deprived of her liberty in this manner without the opportunity for a prior hearing formed the basis for a justiciable claim of deprivation of liberty

without due process. This section provided the plaintiff the opportunity for a hearing after her discharge, but the Constitution of the United States entitled her to a hearing prior to discharge. As the plaintiff did not have an effective administrative remedy, she was not required to exhaust her administrative remedies before bringing her action in the trial court. *Presnell v. Pell*, 39 N.C. App. 538, 251 S.E.2d 692 (1979).

§ 115-35. Powers and duties of county and city boards generally.

Cited in *Fowler v. Williamson*, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

§ 115-35.1. Powers of county and city boards to regulate parking of motor vehicles. — (a) Any county or city board of education may adopt reasonable rules and regulations with respect to the parking of motor vehicles and other modes of conveyance on public school grounds and may enforce such rules and regulations. Any person who violates a rule or regulation concerning parking on public school grounds is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than ten dollars (\$10.00). Provided, however, that any rule or regulation adopted hereunder 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. Rules and regulations adopted hereunder shall be made available for inspection by any person upon request.

(b) Any county or city board of education may adopt written guidelines governing the individual assignment of parking spaces on school grounds. Such guidelines shall give first priority treatment to the physically handicapped.

(c) Any county or city board of education, by rules and regulations adopted hereunder, may provide for the registration of motor vehicles and other modes of conveyance maintained, operated or parked on school grounds. Any county or city board of education, by rules and regulations adopted hereunder, may 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 school grounds and may prohibit the forgery, counterfeiting, unauthorized transfer or unauthorized use of them.

(d) Any motor vehicle parked in a parking lot on school grounds, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at each entrance thereto, in violation of the rules and regulations adopted by the county or city board of education, or any motor vehicle otherwise parked on school grounds in violation of the rules and regulations adopted by the county or city board of education, may be removed from school grounds to a place of storage and the registered owner of such vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from school grounds to place of storage. (1979, c. 821.)

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc. — Any county or city board of education, by securing liability insurance as

hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the county or city board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of said board of education or the agents and employees of a particular school in a county or city administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporation which enters into a contract of insurance as above described with a county or city board of education, by such act waives any defense based upon the governmental immunity of such county or city board of education.

Every county or city board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

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

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

A county or city board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State Nine Months School Fund.

The several county and city boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. The provisions of this section shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115-183.1. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3.)

Editor's Note. — The 1977, 2nd Sess., amendment added the last sentence of the section.

§ 115-53.1. Defense of board of education member and employees. — (a) Upon request made by or in behalf of any member or employee or former member or employee, any local board of education may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as a member of or employee of the local board of education. The defense may be provided by the local board of education by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Nothing in this section shall be deemed to require any local board of education to provide for the defense of any action or proceeding of any nature.

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

(c) Subsection (b) of this section shall not authorize any local board of education to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the local board of education prior to the time that the claim is settled or civil judgment is entered and (ii) the local board of education shall have adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against members or employees or former members and employees shall be defended or paid. (1979, c. 1074, s. 1.)

ARTICLE 6.

*Powers and Duties of Superintendents.***§ 115-58. Duties with respect to election of principals, teachers and other personnel.**

Cited in Presnell v. Pell, 39 N.C. App. 538, 251
S.E.2d 692 (1979).

ARTICLE 7.

*School Committees — Their Duties and Powers.***§ 115-70. Appointment; number of members; terms; vacancies; advisory council.**

Cited in Presnell v. Pell, 39 N.C. App. 538, 251
S.E.2d 692 (1979).

ARTICLE 7A.

Community Schools Act.

§ 115-73.11. Community schools advisory councils; duties; responsibilities; membership. — Every participating local board of education shall establish one or more community schools advisory councils which may become involved in matters affecting the educational process in accordance with rules established by the local board of education and approved by the State Board of Education and further shall consider ways of increasing community involvement in the public schools and utilization of public school facilities. Community schools advisory councils may assist local boards of education in the development and preparation of the plans and programs to achieve such goals, may assist in the implementation of such plans and programs and may provide such other assistance as may be requested by the local boards of education.

Community schools advisory councils shall work with local school officials and personnel, parent-teacher organizations, and community groups and agencies in providing maximum opportunities for public schools to serve the communities, and shall encourage the maximum use of volunteers in the public schools.

At least one half of the members of each community schools advisory council shall be the parents of students in the particular public school system provided when less than twenty-five [percent] (25%) of the pupils attending a particular school reside outside the immediate community of the school, such persons shall be parents of students in the particular school for which the advisory council is established. Wherever possible the local board of education is encouraged to include at least one high school student. The size of the councils and the terms of membership on the councils shall be determined by the local board of education in accordance with the State guidelines. (1977, c. 682; 1979, c. 828.)

Editor's Note. — The 1979 amendment added the second sentence to the third paragraph.

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 10A.

The School Budget and Fiscal Control Act.

Part 2. Budget.

§ 115-100.5. Annual balanced budget resolution.

Cited in *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

*Schools Sites and Property.***§ 115-131. Board cannot erect or repair building unless site is owned by board.**

Local Modification. — *Gaston*: 1979, c. 327.

ARTICLE 16.

State Insurance of Public School Property.

§ 115-135. Public School Insurance Fund; decrease of premiums when fund reaches 5% of total insurance in force. — There shall set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund," which fund hereafter in this Article is referred to as "the fund." In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in this Article and to provide payment for such losses as may be incurred therein, there is hereby appropriated to "the fund" the sum of two million dollars (\$2,000,000), which shall be paid from and charged to the State Literary Fund as set up and defined in this Chapter. When the reserves in "the fund" shall be increased by the payment of premiums by the governing boards of county and city administrative school units, or otherwise, to the extent of one million dollars (\$1,000,000), there shall be transferred from "the fund" back to the State Literary Fund the sum of one million dollars (\$1,000,000) and when "the fund" shall again be increased to the extent of another one million dollars (\$1,000,000), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars (\$1,000,000) in full reimbursement of the sum of two million dollars (\$2,000,000), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of county and city school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in "the fund" for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said fund shall be liable and the expenses necessary for the

proper conduct of the insurance of said property, together with such premiums for reinsurance of such part of said insurance as the State Board of Education may deem necessary to reinsure, as provided for in this Article. The State Treasurer shall be the custodian of the fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

When the fund herein provided for reaches the sum of five percent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain "the fund" at five percent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of "the fund" are sufficient to maintain the same at five percent (5%) of the total insurance in force, no premium shall be charged for the ensuing year, provided that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the fund shall be increased beyond five percent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of this Article within such five-year period. (1955, c. 1372, art. 16, s. 2; 1979, c. 467, s. 7.)

Editor's Note. — The 1979 amendment substituted the present last sentence of the first paragraph for the former next-to-last and last sentences of the first paragraph, which provided for investment by the State Treasurer in

securities which constitute permissible investments for State sinking funds, and required the State Treasurer to file an annual report to the State Board of Education and to the General Assembly.

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. System of employment for public school teachers.

(e) Grounds for Dismissal or Demotion of a Career Teacher. —

- (1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for:
 - 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 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 such career teacher's teaching certificate;
 - l. A justifiable decrease in the number of positions due to district reorganization or decreased enrollment, provided that subdivision (2) is complied with; or

- m. Failure to maintain one's 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.
- (2) When a career teacher is dismissed pursuant to G.S. 115-142(e)(1) above, his or her name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the school system offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.
- (3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing school system and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his or her performance shall be conclusive evidence of satisfactory performance.
- (4) Dismissal under subdivision (1) above, except paragraph g 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 is mailed to the teacher.
- (1979, c. 864, s. 2.)

Editor's Note. —

The 1979 amendment added paragraph n to subdivision (e)(1).

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

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

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

For an article entitled, "Teacher Renewal in North Carolina," see 14 Wake Forest L. Rev. 739 (1978).

The regulations prescribing a teacher's speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct. The application of the regulations in each case depends on many factors, such as the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the context and manner of presentation. *Frison v. Franklin County Bd. of Educ.*, 596 F.2d 1192 (4th Cir. 1979).

Nothing in subdivision (m)(2) obligates the board to rehire or to advance a probationary

teacher to career status when principal's adverse reports have not been disclosed. *Simmon v. Poe*, 564 F.2d 1093 (4th Cir. 1977).

Subdivision (m)(2) Does Not Establish Property Interest under Fourteenth Amendment. — While subdivision (m)(2) of this section may create a right of action in the State courts, it does not establish a property interest under the Fourteenth Amendment. *Simmon v. Poe*, 564 F.2d 1093 (4th Cir. 1977).

While subdivision (m)(2) of this section is phrased in part in language sometimes used in connection with due process or equal protection rights, the two should not be confused. *Simmon v. Poe*, 564 F.2d 1093 (4th Cir. 1977).

Judicial Review Provided by Subsection (n) Is Part of Statutory Grievance Procedure. — Since the judicial review provided by subsection (n) of this section is part of a statutory grievance procedure, it should not be conducted in a federal court under the doctrine of *pendente jurisdiction*. *Frison v. Franklin County Bd. of Educ.*, 596 F.2d 1192 (4th Cir. 1979).

Applied in *Kurtz v. Winston-Salem/Forsyth County Bd. of Educ.*, 39 N.C. App. 412, 250 S.E.2d 718 (1979).

§ 115-142.4. 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 paramedic 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 lifesaving skills, to students participating in school activities. (1979, c. 986.)

Editor's Note. — Sessions Laws 1979, c. 986, s. 3, makes this section effective July 1, 1979.

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.

Editor's Note. — For note on constitutional restrictions on the infliction of corporal punishment, see 50 N.C.L. Rev. 911 (1972).

Local school boards and school officials have the implied right to adopt appropriate and reasonable rules and regulations for the purpose of carrying out their powers and duties. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

The regulations prescribing a teacher's speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct. The application of the regulations in each case depends on many factors, such as the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the context and manner of presentation. Frison v. Franklin County Bd. of Educ., 596 F.2d 1192 (4th Cir. 1979).

Regulation of Corporal Punishment. — County school board's policy regulating corporal

punishment held not in violation of this section. See Kurtz v. Winston-Salem/Forsyth County Bd. of Educ., 39 N.C. App. 412, 250 S.E.2d 718 (1979).

School Dress Code. — A school may adopt a dress code and may exclude a student from participating in certain school programs, including graduation ceremonies, if the student does not comply with the dress code. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

Violation of Dress Code. — Where the principal of a high school established a lawful and valid dress code for eligible graduates participating in the graduation ceremony, and the plaintiffs' son appeared for the graduation ceremony attired in violation of the code in that he did not wear dress pants as required but instead wore denim jeans, the defendant principal had the legal right to exclude plaintiffs' son from the graduation ceremony for violation of the dress code. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

§ 115-146.1. Scope of duty of teachers to include some medical care. — It is within the scope of duty of teachers, including substitute teachers, teachers' aides, student teachers or any other public school employee when given such authority by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or lifesaving techniques in which the employee has been trained in a program approved by the State Board of Education. Provided, that no one shall be required to administer drugs or medication or attend lifesaving techniques training programs.

At the commencement of each school year, but prior to the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program. (1979, c. 971, s. 1.)

Cross References. As to State defense of public school employees in the event of suit arising out of their actions pursuant to this section, see §§ 143-300.12 through 143-300.17.

Editor's Note. — Session Laws 1979, c. 971, s. 4, makes this section effective July 1, 1979.

§ 115-147. Suspension or expulsion of pupils. — (a) Local boards of education shall adopt policies governing the conduct of students and shall cause these policies to be published and made available at the beginning of each school year to each student and his parents. Local boards of education shall also adopt policies, not inconsistent with the provisions of this section or the Constitutions of the United States and North Carolina, establishing procedures to be followed by school officials in suspending or expelling any pupil from school and shall cause such procedures to be published and made available at the beginning of each school year to each student and his parents.

(b) The principal of a school, or his delegate, shall have authority to suspend any student who willfully violates policies of conduct established by the local board of education for a period of 10 days or less: Provided, that a student suspended pursuant to this subsection shall be provided an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the superintendent, shall have the authority to suspend any pupil who willfully violates the policies of conduct established by the local board of education for periods of time in excess of 10 school days, but not exceeding the time remaining in the school year. The pupil or his parents may appeal the decision of the principal to the local board of education.

(d) A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older who has been convicted of a felony and whose continued presence in school constitutes a clear threat to the safety and health of other students or employees. Notwithstanding the provisions of G.S. 115-374, a local board of education has no duty to continue to provide a child with special needs, expelled pursuant to this subsection, with any special education or related services during the period of expulsion.

(e) A final decision of the local board of education pursuant to subsections (c) and (d) shall be subject to judicial review in the manner provided by Article 4, Chapter 150A of the General Statutes. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158; 1979, c. 874, s. 1.)

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

ARTICLE 18.

Certification and Salaries of Employees; Workers' Compensation.

§ 115-157. Pay of school officials and other employees. — 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 administrative unit or school district 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:

- (3) Supervisors. — State-allotted supervisors shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each

calendar month of service for the term of their employment. Included within their term of employment shall be provided the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above.

- (3a) Classified Principals. — Classified principals shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each calendar month of service for the term of their employment. They shall earn annual leave at the rate of 1.25 days per month employed and shall be provided legal holidays as set out in subdivision (1) above.
- (4) Superintendents and Other Employees on an Annual Basis. — The salaries of superintendents and others employed on an annual basis shall be paid monthly on the basis of each calendar month of service. Included within their term of employment shall be provided the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above.
- (6) 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. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year, except as provided in subdivision (7a) of this section.
- (7) Each county and city board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.
- (7a) Supervisors, classified principals, superintendents and other 12-month school employees 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 December 31 of each year. On December 31 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to January 1 of the next 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. It is the intent of the General Assembly that leave accumulated as provided herein shall not be used to extend the term of employment of any individual and that any leave not used prior to termination of employment for any reason shall be automatically cancelled.

(1979, c. 600, ss. 1-5.)

Local Modification. — Gaston: 1979, c. 331.

Editor's Note. —

The 1979 amendment, effective July 1, 1979, deleted a reference to annual leave to be determined by the local boards of education, and providing that it could be cumulated up to 15 days and taken within the first 60 days of the following year in subdivisions (3), (3a), and (4). The amendment substituted the present first sentence of subdivision (6) for one which read:

"The provisions for annual vacation leave and holidays referred to in this section shall apply only to such persons employed by the county and city boards of education during the days designated by each county and city board of education as vacation days." The amendment also added subdivision (7a).

Only the introductory language and the subdivisions added or changed by the amendment are set out.

§ 115-159.1. Salary of teacher injured during episode of violence. — (a) Any teacher as defined in G.S. 135-1(25) who, while engaged in the course of his employment or in any activities incidental thereto, suffers any injury or disability resulting from or arising out of any episode of violence by one or more persons shall be entitled to receive his full salary during the shortest of these periods: one year, or the continuation of his disability, or the time during which he is unable to engage in his employment because of injury. An episode of

violence shall be defined to mean but shall not be limited to any acts of violence directed toward any school building or facility, or to any teacher or any student by any person including but not limited to another student. These benefits shall be in lieu of all other income or disability benefits payable under workers' compensation to such teacher only during the period prescribed herein. Thereafter, such teacher shall be paid such income or disability payments to which he might be entitled under workers' compensation. If the employment of a substitute teacher is necessitated by the disability of the injured teacher, the salary of such substitute teacher shall be paid from the same source of funds from which the teacher is paid. This section shall in no way limit the right of the injured teacher to receive the benefits of medical, hospital, drug and related expense payments from any source, including workers' compensation. Provided further that this section shall not apply to any teacher who is injured while he himself participates in or provokes such episode of violence except as is incident to the maintenance or restoration of order or classroom discipline or to defend himself. Provided further that this section shall be given liberal construction and interpretation as to any and all definitions, conditions, and factual circumstances set forth herein.

(b) Any teacher claiming the benefits of this section shall file claim with the board of education employing such teacher within one year after the occurrence giving rise to his alleged injury. That board of education shall, within 30 days after receipt of such claim, decide whether and to what extent that teacher is entitled to the benefits of this section and shall forthwith transmit its decision in writing to such teacher. That teacher shall, however, have the right to appeal the decision of that board of education to the North Carolina Industrial Commission by serving that board of education and the North Carolina Industrial Commission with written notice thereof within 30 days after receipt of the board's written decision. In determining all appeals under this section the North Carolina Industrial Commission shall constitute a court for the purpose of hearing de novo and passing upon all claims thereby presented in accordance with procedures utilized by the Commission in determining claims under the Workers' Compensation Act. The decision of the Industrial Commission in each instance shall be subject to appeal to the North Carolina Court of Appeals as provided in G.S. 143-293 and 143-294. (1971, c. 640, ss. 1, 2; 1973, c. 753; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "Workers'" for "Workmen's" in three places in subsection

(a), and substituted "Workers'" for "Workmen's" near the end of the next-to-last sentence in subsection (b).

§ 115-160. Workers' Compensation Act applicable to school employees. — The provisions of the Workers' Compensation Act shall be applicable to all school employees, and the State Board of Education shall make such arrangements as are necessary to carry out the provisions of Workers' Compensation Act as are applicable to such employees as are paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the State-operated nine months' school term. The State shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workers' Compensation Act, whether all of said compensation for the nine months' school term is paid from State funds or in part supplemented by local funds. The State shall also be liable for workers' compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such

employees. The county and city administrative units shall be liable for workers' compensation for school employees, including lunchroom employees, whose salaries or wages are paid by such local units from local or special funds. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this Subchapter. (1955, c. 1372, art. 18, s. 9; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "Workers'" for "Workmen's" in three places and substituted "workers'" for "workmen's" in two places, all in the first paragraph.

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Admissions, Attendance, and Student Records.

§ 115-163. Pupils residing in school district shall have advantages of public schools.

Local Modification. — Chatham and Randolph: 1979, c. 793.

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. Parent or guardian required to keep child in school; exceptions. — Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall encourage, entice or counsel any such child to be unlawfully absent from school.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

The principal shall notify the parent, guardian, or custodian of his child's excessive number of absences from school after his child has five consecutive or 10 accumulated absences whichever occurs first, unless the principal is satisfied that these absences are excused under the established attendance policies of the local school board. Once the parents are notified, the school attendance counselor shall work with the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law enforcement officer accompany him if he believes that a home visit is necessary.

Notification of a parent shall be in writing and shall state that the parent may be prosecuted under the General Compulsory Attendance Law if these absences cannot be justified under the established attendance policies of the local school board. The principal shall notify the prosecutor after 30 accumulated absences, unless he has notified the prosecutor sooner. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 30 absences which cannot be justified under the established attendance policies of the local school board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846; 1975, c. 678, s. 2; c. 731, s. 3; 1979, c. 847.)

Editor's Note. —

The 1979 amendment added the last two paragraphs.

This section does not compel every child to attend public schools exclusively for the prescribed period. Such a law would be invalid. *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298, cert. granted, 296 N.C. 108, 249 S.E.2d 807 (1978).

Willfulness is not contained in this section as an element of the offense. *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298, cert. granted, 296 N.C. 108, 249 S.E.2d 807 (1978).

Competence of Testimony of Public School Officials. —

In a prosecution based on this section public school officials were competent to testify as to whether or not the school in which the defendant's daughter was placed was an "approved" nonpublic school. *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298, cert. granted, 296 N.C. 108, 249 S.E.2d 807 (1978).

Applied in *State v. Vietto*, 297 N.C. 8, 252 S.E.2d 732 (1979).

§ 115-169. Violation of law; penalty.

Cited in *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298 (1978).

§ 115-170. Investigation and prosecution by attendance counselor.

Cited in *State v. Vietto*, 297 N.C. 8, 252 S.E.2d 732 (1979).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-183. Use and operation of school buses. — Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each county and city administrative unit to

supervise the use of all school buses operated by such county or city administrative unit so as to assure and require compliance with this section:

- (6) School buses owned by a local board of education may be used for civil preparedness purposes in any state of disaster or local state of emergency declared under Chapter 166A of the General Statutes. Under rules and regulations adopted by a local board of education, its school buses may be used with its permission for the purpose of testing civil preparedness plans; however, neither the State Board of Education nor the local board of education shall be liable for the operating cost, any compensation claims or tort claims resulting from the test.
- (7) Uses authorized by G.S. 115-183.1. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47; 1973, c. 869; 1977, c. 830, ss. 2, 3; 1977, 2nd Sess., c. 1280, s. 2; 1979, c. 885.)

Editor's Note. — The 1977, 2nd Sess., amendment added subdivision (7). paragraph and subdivisions (6) and (7) are set out.

The 1979 amendment rewrote subdivision (6).

As the rest of this section was not changed by the amendments, only the introductory

§ 115-183.1. Use of school buses by senior citizen groups. — (a) Any county board of education or city board of education may enter into agreements with the governing body of any county, city, or town, or with any State agency, or any agency established or identified pursuant to Public Law 89-73 (The Older Americans Act of 1965), as it is now or may be amended, to provide for the use of school buses to provide transportation for the elderly.

(b) Each agreement entered into under this section must provide the following:

- (1) That the board of education shall be reimbursed in full for the proportionate share of any and all costs, both fixed and variable, of such buses attributable to the uses of the bus pursuant to the agreement;
- (2) That the board of education shall be held harmless from any and all liability by virtue of uses of the buses pursuant to the agreement;
- (3) That adequate liability insurance is maintained under G.S. 115-53 to insure the board of education, and adequate insurance is maintained to protect the property of the board of education. The minimum limit of liability insurance shall not be less than the maximum amount of damages which may be awarded under the Tort Claims Act, G.S. 143-291. The costs of said insurance shall be paid by the agency contracting for the use of the bus, either directly or through the fee established by the agreement.

(c) Before any board of education shall enter into any agreement under this section, it must by resolution establish a policy for use of school buses by the elderly. The policy must give first priority to school uses under G.S. 115-183 and G.S. 115-53. The resolution must provide for a schedule of charges under this section. Such resolution, if adopted, shall be amended or readopted at least once per year to provide for adjustments to the schedule of charges or to provide for maintaining the same schedule of charges. If the price bid for the service by a private bus carrier is less than the schedule of charges adopted by the board of education, then the board of education may not enter into the agreement.

(d) No board of education shall be under any duty to sign any agreement under this section.

(e) No bus operated under the provisions of this section shall travel outside of the area consisting of the county or counties where the county or city board of education is located and the county or counties contiguous to that county or counties, but not outside of the State of North Carolina.

(f) Before any agreement under this section may be signed the State Board of Education shall adopt a uniform schedule of charges for the use of buses under this section. Such schedule must be approved by the Advisory Budget Commission before becoming effective. Such schedule shall include a charge by the hour and by the mile which shall cover all costs both fixed and variable, including depreciation, gasoline, fuel, labor, maintenance, and insurance. The schedule may be amended by the State Board of Education with the concurrence of the Advisory Budget Commission. The schedule of charges adopted by the local board of education under subsection (c) may vary from the State schedule only to cover changes in wages. (1977, 2nd Sess., c. 1280, s. 1.)

§ 115-185. School bus drivers; monitors; safety assistants.

(d) The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the county or city board of education for the safety of pupils and employees upon school buses. Such monitors shall be unpaid volunteers who shall serve at the pleasure of the principal.

(e) A local board of education may, in its discretion within funds available, employ transportation safety assistants upon recommendation of the principal through the superintendent. The safety assistants thus employed shall assist the bus drivers with the safety, movement, management, and care of children boarding the bus, leaving the bus, or being transported in it. The safety assistant should be either an adult or a certified student driver who is available as a substitute bus driver.

(f) Funds appropriated for the special purpose of children with special needs may be used to pay transportation safety assistants employed in accordance with the provisions of this section for buses to which children with special needs are assigned. (1955, c. 1372, art. 21, s. 6; 1979, c. 719, ss. 1-4.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, added the last sentence to subsection (d), and added subsections (e) and (f).

As subsections (a), (b) and (c) were not changed by the amendment, they are not set out.

§ 115-192. Payment of awards to school bus drivers pursuant to the Workers' Compensation Act. — In the event that the Industrial Commission shall make an award pursuant to the Workers' Compensation Act against any county or city board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the county or city board of education shall draw a requisition or requisitions upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months' school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any

school bus driver of any other person for the payment of any claim, award, or judgment under the provisions of the Workers' Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education, nor shall the county or city board of education, the county or city administrative unit, nor the said tax levying authorities be required to provide or carry workers' compensation insurance for such purpose. (1955, c. 1292; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "Workers'" for "Workmen's" near the beginning of the first

sentence and near the end of the fourth sentence, and substituted "workers'" for "workmen's" near the end of the last sentence.

SUBCHAPTER X. INSTRUCTION.

ARTICLE 24.

Courses of Study.

§ 115-198.2. Standard class duration. — Classes in basic academic courses in grades 7 through 9 of departmentalized public schools shall be limited to one hour's duration unless the specific approval of the State Board of Education is obtained in advance for a longer duration. (1979, c. 1069, s. 1.1.)

Editor's Note. — Sessions Laws 1979, c. 1069, s. 2, makes this section effective July 1, 1979.

§ 115-204.1. School health education program to be developed and administered. — (a) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program shall be developed over a 10-year period beginning July 1, 1978.

(b) As used above, "comprehensive school health" includes the subject matter of mental and emotional health, drug and alcohol abuse prevention, nutrition, dental health, environmental health, family living, consumer health, disease control, growth and development, first aid and emergency care, and any like subject matter.

(c) The development and administration of this program shall be the responsibility of each local educational administrative unit in the State, a local school health education coordinator for each county the State Department of Public Instruction, and a State School Health Education Advisory Committee.

(d) Each existing local educational administrative unit is eligible to develop and submit a plan for a comprehensive school health education program which shall meet all standards established by the State Board of Education, and to apply for funds to execute such plans.

(e) The State Department of Public Instruction shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training; learning material review; and assessment and evaluation of local programs in the same manner as for other programs. It is the intent of this legislation that a specific position or positions

in Public Instruction shall be assigned responsibilities as set forth in this section.

(f) A State School Health Advisory Committee is hereby established.

- (1) The committee shall provide citizen input into the operations of the program; report annually to the State Board of Education on progress in accomplishing the provisions and intent of this legislation; provide advice to the department with regard to its duties under this section; and encourage development of higher education programs which would benefit health education in the public schools.
- (2) The committee shall meet as necessary but at least twice annually. It shall select annually a chairperson from among its own membership, each member having an equal vote and the chairperson shall appoint such subcommittees as may be necessary. Members of the committee shall serve without compensation; however, they shall be reimbursed by the Department of Public Instruction for travel and other expenses incurred in the performance of their duties as members of the committee (to the extent that funds are appropriated for this purpose).
- (3) The committee shall consist of 17 members: 10 appointed by the Governor, two by the State Board of Education, one by the Speaker of the House of Representatives, one by the President of the Senate, and three ex officio members: the Chief, Office of Health Education, North Carolina Department of Human Resources; the Chief, State Health Planning and Development Agency, North Carolina Department of Human Resources; and the Superintendent of Public Instruction, or their designates. The Governor's appointees shall be named in the following manner: one physician from a list of three names submitted by the North Carolina Medical Society; one physician from a list of three names submitted by the North Carolina Pediatric Society; one physician from a list of three names submitted by the North Carolina Chiropractic Association; one registered nurse from a list of three names submitted by the North Carolina Nurses' Association; one dentist from a list of three names submitted by the North Carolina Dental Society; one member from a list of three names submitted by the North Carolina Medical Auxiliary; one member from a list of three names submitted by the North Carolina Congress of Parents and Teachers, Inc.; one member from a list of three names submitted by the North Carolina Association for Health, Physical Education, and Recreation; one member from a list of three names submitted by the North Carolina Public Health Association; one member from a list of three names submitted by the North Carolina College Conference on Professional Preparation in Health and Physical Education. The State Board nominees shall represent local school administrative units and shall have been recommended by the Superintendent of Public Instruction. The Speaker's nominee shall be a member of the North Carolina House of Representatives and the President of the Senate's nominee shall be a member of the Senate.
- (4) The appointed members of the advisory committee shall serve for a term of three years; except that in the case of the initial appointments, the representative of the North Carolina Pediatric Society, one of the representatives of a local school administrative unit, the representative of the North Carolina Association for Health, Physical Education, and Recreation, and the member of the North Carolina General Assembly shall be appointed for a term of two years; and the representatives of the North Carolina Nurses' Association, the North Carolina Dental Society, the North Carolina Congress of Parents and Teachers, Inc., and the North Carolina Public Health Association shall be appointed for a term of one year. Each of these computations shall be made as of July 1, 1977. Thereafter, each succeeding term shall be for three years.

Appointed members may be reappointed up to a maximum of nine years of service. Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term. (1977, 2d Sess., c. 1256, s. 1.)

Editor's Note. — Session Laws 1977, 2d Sess., c. 1256, s. 3, makes the act effective July 1, 1978.

ARTICLE 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§§ 115-243, 115-244: Repealed by Session Laws 1979, c. 420, s. 1.

ARTICLE 32.

Nonpublic Schools.

§§ 115-257.1 to 115-257.5: Reserved for future codification purposes.

ARTICLE 32A.

Private Church Schools and Schools of Religious Charter.

§ 115-257.6. **Policy.** — In conformity with the Constitutions of the United States and of North Carolina, it is the public policy of the State in matters of education that “No human authority shall, in any case whatever, control or interfere with the rights of conscience” or with religious liberty and that “religion, morality and knowledge being necessary to good government and the happiness of mankind . . . the means of education shall forever be encouraged.” (1979, c. 505.)

§ 115-257.7. **Attendance; health and safety regulations.** — Each private church school or school of religious charter shall make and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Article relates and which complies with this Article shall satisfy the requirements of compulsory school attendance, (provided however, that such school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year). Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law. (1979, c. 505.)

§ 115-257.8. **Standardized testing requirements.** — Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school to all students enrolled or regularly attending grades 1, 2, 3, 6, and 9. The nationally standardized test or other equivalent measurement selected must measure

achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115-320.26, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505.)

§ 115-257.9. High school competency testing. — To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the 11th grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each private church school or school of religious charter shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115-320.26, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505.)

§ 115-257.10. Voluntary participation in the State programs. — Any such school may, on a voluntary basis, participate in any State operated or sponsored program which would otherwise be available to such school, including but not limited to the high school competency testing and statewide testing programs. (1979, c. 505.)

§ 115-257.11. New school notice requirements; termination. — (a) Any new school to which this Article relates shall send to a duly authorized representative of the State of North Carolina a notice of intent to operate, name and address of the school, and name of the school's owner and chief administrator.

(b) Any school to which this Article applies shall notify a duly authorized representative of the State of North Carolina upon termination. (1979, c. 505.)

§ 115-257.12. Duly authorized representative. — The duly authorized representative of the State of North Carolina to whom reports of commencing operation and termination shall be made and who may inspect certain records under this Article shall be designated by the Governor. (1979, c. 505.)

§ 115-257.13. Requirements exclusive. — No school, operated by any church or other organized religious group or body as part of its religious ministry, which complies with the requirements of this Article, shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization. (1979, c. 505.)

§§ 115-257.14 to 115-257.18: Reserved for future codification purposes.

ARTICLE 32B.

Qualified Nonpublic Schools.

§ 115-257.19. Qualification of nonpublic schools. — The provisions of this Article shall apply to nonpublic schools which:

- (1) Shall be accredited by the State Board of Education; or
- (2) Shall be accredited by the Southern Association of Colleges and Schools;
or
- (3) Shall be an active member of the North Carolina Association of Independent Schools; or
- (4) Receives no funding from the State of North Carolina. (1979, c. 506.)

§ 115-257.20. Attendance; health and safety regulations. — Each qualified nonpublic school shall make and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Article relates and which complies with this Article shall satisfy the requirements of compulsory school attendance, (provided however, that such school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year). Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law. (1979, c. 506.)

§ 115-257.21. Standardized testing requirements. — Each qualified nonpublic school shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades 1, 2, 3, 6, and 9. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115-320.26, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506.)

§ 115-257.22. High School Competency Testing. — To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each qualified nonpublic school shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each qualified nonpublic school shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115-320.26, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506.)

§ 115-257.23. Voluntary participation in the State programs. — Any such school may, on a voluntary basis, participate in any State operated or sponsored program which would otherwise be available to such school, including but not

limited to the high school competency testing and statewide testing programs. (1979, c. 506.)

§ 115-257.24. New school notice requirements; termination. — (a) Any new school to which this Article relates shall send to a duly authorized representative of the State of North Carolina a notice of intent to operate, name and address of the school, and name of the school's owner and chief administrator.

(b) Any school to which this Article applies shall notify a duly authorized representative of the State of North Carolina upon termination. (1979, c. 506.)

§ 115-257.25. Duly authorized representative. — The duly authorized representative of the State of North Carolina to whom reports of commencing operation and termination shall be made and who may inspect certain records under this Article shall be designated by the Governor. (1979, c. 506.)

§ 115-257.26. Requirements exclusive. — No qualifying nonpublic school, which complies with the requirements of this Article, shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization. (1979, c. 506.)

ARTICLE 38B.

Education Expense Grants for Exceptional Children.

§ 115-315.7. Statement of legislative policy and purposes.

Learning Disabled Children. — While the general terms of § 153A-248(a)(2) could conceivably be construed to address the problem of inadequate educational opportunities for learning disabled children in the school system,

it is evident that the specific remedies prescribed in §§ 115-315.7, et seq., 115-384, and 115-377 are controlling. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

§ 115-315.8. Definitions.

The term “exceptional children” encompasses “severely learning disabled”

children who suffer from dyslexia. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

ARTICLE 38D.

Regional Educational Training Centers.

§§ 115-315.27 to 115-315.31: Reserved for future codification purposes.

ARTICLE 38E.

North Carolina School of Science and Mathematics.

§ 115-315.32. Establishment of North Carolina School of Science and Mathematics. — The North Carolina School of Science and Mathematics is established to be governed by a board of trustees described in this Article. (1977, 2nd Sess., c. 1219, s. 42.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1219, s. 59, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 115-315.33. Board of Trustees; appointment; terms of office. — (a) The Board of Trustees of the North Carolina School of Science and Mathematics consists of the following members:

- (1) Five ex officio nonvoting members: the Chairman of the State Board of Education; the Superintendent of Public Instruction; the President of the Community College System; the President of the Association of Independent Colleges and Universities; and one member of the Board of Governors of The University of North Carolina designated by the Chairman of that Board.
- (2) Two members appointed by the Superintendent of Public Instruction: a science teacher; and a mathematics teacher; both of whom are from within the State.
- (3) Two members appointed by the Lieutenant Governor: a member of the Senate; and a superintendent of a local school system.
- (4) Two members appointed by the Speaker of the House of Representatives: a member of the House; and a principal of a local school system.
- (5) Fifteen members appointed by the Governor, at least 12 of whom shall be scientists and mathematicians. One of these scientists or mathematicians shall be designated by the Governor as Chairman of the Board of Trustees.

(b) The terms of the appointments of the Lieutenant Governor and of the Speaker of the House shall coincide with the terms of the particular appointing officer. The two initial appointments of the Superintendent of Public Instruction shall be for terms of four years. Five of the initial appointments of the Governor shall be for terms of two years; five shall be for terms of four years; and five shall be for terms of six years. With the exception of the appointments of the Lieutenant Governor and Speaker of the House, at the expiration of the terms of the initial appointees, their successors shall be appointed for terms of six years, beginning July 1 in the year of the respective appointments.

(c) Vacancies in appointive terms shall be filled for the unexpired portion of the terms by appointment of the officer who appointed the person causing each vacancy. (1977, 2nd Sess., c. 1219, s. 42.)

§ 115-315.34. Budget; preparation; submission. — The Board of Trustees, assisted by administrative staff, shall prepare budgets for the School and shall submit these budgets directly to the Governor. (1977, 2nd Sess., c. 1219, s. 42.)

SUBCHAPTER XIII. SPECIAL EDUCATION.

ARTICLE 45.

State Policy.

§ 115-363. Policy.

Cited in *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

ARTICLE 46.

Nondiscrimination in Education.

§ 115-374. Disciplinary suspensions. — If a local educational agency suspends or expels a child with special needs from a public school program for a period of more than 10 days or for consecutive periods that total more than 10 days because he is or poses a risk of injury to himself or others or because he is or is threatening to substantially disrupt the education of others, the agency, notwithstanding the suspension or expulsion, shall continue to provide the child with essential special education or related services during the period of suspension or expulsion if that period is one in which the child would be receiving special education or training in the unit but for the suspension or expulsion. The parents may appeal, under G.S. 115-179.1, any suspension of more than 10 consecutive days. These limitations on suspension and expulsion shall not interfere with the authority of the Department of Human Resources to release or discharge patients and residents from its programs when the primary purpose of admission has been achieved or when it is no longer feasible or advisable to continue the patient or resident in residence.

The expulsion or suspension of a child with special needs shall not be subject to the provisions of G.S. 115-179.1 and there shall be no requirement for continued special education or related services unless the risk of injury or disruption of education of others for which the child was suspended or expelled was caused by the lack of proper medication, appropriate educational services or ambulatory services for the child. (1977, c. 927, s. 1; 1979, c. 874, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, added the last paragraph.

§ 115-377. Private school placements.

Learning Disabled Children. — While the general terms of § 153A-248(a)(2) could conceivably be construed to address the problem of inadequate educational opportunities for learning disabled children in the school system,

it is evident that the specific remedies prescribed in §§ 115-315.7, et seq., 115-384, and this section are controlling. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

ARTICLE 47.

*State and Local Relationships.***§ 115-384. Contracts with private service — providers.**

Learning Disabled Children. — While the general terms of § 153A-248(a)(2) could conceivably be construed to address the problem of inadequate educational opportunities for learning disabled children in the school system,

it is evident that the specific remedies prescribed in §§ 115-315.7, et seq., 115-377, and this section are controlling. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

Chapter 115A.

Community Colleges, Technical Institutes, and
Industrial Education Centers.

§§ 115A-1 to 115A-42: Repealed by Session Laws 1979, c. 462, s. 1.

Cross References. — For present provisions concerning community colleges and technical institutes, see Chapter 115D.

Chapter 115C.

[Reserved for future codification purposes.]

Chapter 115D.

Community Colleges and Technical Institutes.

Article 1.

General Provisions for State Administration.

- Sec.
- 115D-1. Statement of purpose.
- 115D-2. Definitions.
- 115D-2.1. State Board of Community Colleges and Technical Institutes.
- 115D-3. State Board of Education to establish department to administer system of educational institutions; employment of personnel in community college system.
- 115D-4. Establishment and transfer of institutions.
- 115D-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc. for establishment and operation of extension units of the community college system; use of existing public school facilities.
- 115D-6. Withdrawal of State support.
- 115D-7 to 115D-11. [Reserved.]

Article 2.

Local Administration.

- 115D-12. Each institution to have board of trustees; selection of trustees.
- 115D-13. Terms of office of trustees.
- 115D-14. Board of trustees a body corporate; corporate name and powers; title to property.
- 115D-15. Sale, exchange or lease of property.
- 115D-16. Elective officials serving as trustees.
- 115D-17. Compensation of trustees.
- 115D-18. Organization of boards; meetings.
- 115D-19. Removal of trustees.
- 115D-20. Powers and duties of trustees.
- 115D-21. Traffic regulations; fines and penalties.
- 115D-22. State Retirement System for Teachers and State Employees; social security.
- 115D-23. Workmen's Compensation Act applicable to institutional employees.
- 115D-24. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.
- 115D-25. Purchase of annuity or retirement income contracts for employees.
- 115D-26 to 115D-30. [Reserved.]

Article 3.

Financial Support.

- Sec.
- 115D-31. State financial support of institutions.
- 115D-32. Local financial support of institutions.
- 115D-33. Providing local public funds for institutions established under this Chapter; elections.
- 115D-34. Providing local public funds for institutions previously established.
- 115D-35. Requests for elections to provide funds for institutions.
- 115D-36. Elections on question of conversion of institutions and issuance of bonds therefor.
- 115D-37. Payment of expenses of special elections under Chapter.
- 115D-38. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues.
- 115D-39. Student tuition and fees.
- 115D-40 to 115D-44. [Reserved.]

Article 4.

Budgeting, Accounting, and Fiscal Management.

- 115D-45. Preparation and submission of institutional budgets.
- 115D-46. Administration of institutional budgets for local public funds.
- 115D-47. Payment of State and local public funds to boards of trustees.
- 115D-48. Disbursement of institutional funds.
- 115D-49. Purchase of equipment and supplies.
- 115D-50. Audits of institutional accounts.
- 115D-51. Surety bonds.
- 115D-52. Fire and casualty insurance on institutional buildings and contents.
- 115D-53. Liability insurance; tort actions against boards of trustees.
- 115D-54 to 115D-58. [Reserved.]

Article 5.

Special Provisions.

- 115D-59. Multiple-county administrative areas.
- 115D-60. Special provisions for Central Piedmont Community College.
- 115D-61. Special provisions for Coastal Carolina Community College.
- 115D-62. Trustee Association Regions.
- 115D-63 to 115D-67. [Reserved.]

Article 6.

Textile Training School.

Sec.

- 115D-68. Creation of board of trustees; members and terms of office; no compensation.
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ARTICLE 1.

General Provisions for State Administration.

§ 115D-1. Statement of purpose. — The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools. (1963, c. 448, s. 23; 1969, c. 562, s. 1; 1979, c. 462, s. 2.)

§ 115D-2. Definitions. — As used in this Chapter:

- (1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.
- (2) The term "community college" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. Which offers the freshman and sophomore courses of a college of arts and sciences,
 - b. Which offers organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;
 - c. Which offers vocational, trade, and technical specialty courses and programs, and
 - d. Which offers courses in general adult education.
- (3) The term "institution" refers to a community college or a technical institute.
- (4) The term "regional institution" means an institution which serves four or more counties which have been assigned as of July 1, 1973, to the institution by the Department of Community Colleges for purposes of conducting adult education classes.
- (5) The term "State Board of Education" refers to the State Board of Education as established and described in Article IX, Section 4, of the Constitution of North Carolina.

- (6) The "tax-levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.
- (7) The term "technical institute" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. Which offers organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;
 - b. Which offers vocational, trade, and technical specialty courses and programs,
 - c. Which offers courses in general adult education.
 - d. The terms "technical institute" and "technical college" are deemed to be synonymous. Local boards of trustees, with concurrence of the respective county commissioners, may elect to use either term. (1963, c. 448, s. 23; 1969, c. 562, s. 2; 1973, c. 590, s. 1; 1979, c. 462, s. 2; c. 553.)

Editor's Note. — The 1979 amendment added paragraph d to subdivision (7).

Amendment Effective January 1, 1981. — Sessions Laws 1979, c. 896, s. 1, effective January 1, 1981, will amend subdivision (5) to read as follows:

"(5) The term 'State Board' refers to the State Board of Community Colleges and Technical Institutes."

§ 115D-2.1. State Board of Community Colleges and Technical Institutes.

— (a) Establishment. The State Board of Community Colleges and Technical Institutes is established.

(b) Structure and Appointment. The State Board shall consist of 19 members, including the Lieutenant Governor, and the Treasurer of North Carolina who shall be ex officio members. The Governor shall appoint one person to the State Board from each of the six Trustee Association Regions defined in G.S. 115D-63, and four persons from the State at large; appointment of these 10 original members shall be made by July 1, 1980; three shall be appointed for terms expiring June 30, 1981, three shall be appointed for terms expiring June 30, 1983, and four shall be appointed for terms expiring June 30, 1985. Thereafter appointments to these positions shall be for six-year terms. The General Assembly by joint resolution shall select seven persons from the State at large and the Governor shall appoint these persons to membership on the State Board by July 1, 1980; two members shall be for terms expiring June 30, 1981; two shall be for terms expiring June 30, 1983; and three shall be for terms expiring June 30, 1985; thereafter, selection and appointment of these members shall be for six-year terms. No person shall be appointed to more than two full terms in succession. In 1980, at a meeting to be called by the Governor, the State Board shall elect from its voting membership for a one-year term a chairman and such other officers as the State Board deems necessary. At the first regular meeting held after appointment of new members in each odd-numbered year, the State Board shall elect from its voting membership for a two-year term a chairman and such other officers as the State Board deems necessary. No member of the General Assembly or officer or employee of the State or of any constituent institution or the spouse of any such member, officer, or employee may be a member of this Board, provided however, that the Lieutenant Governor and the State Treasurer shall serve as provided in this subsection.

(c) Meetings. Regular meetings of the State Board of Community Colleges and Technical Institutes shall be held each month on a day fixed by the State Board. Ten voting members shall constitute a quorum for the transaction of business. Special meetings of the State Board may be set at any regular meeting or may be called by the chairman.

(d) Legislative Confirmation. Except as otherwise provided in subsection (e) of this section, all persons appointed to the State Board by the Governor, other than those selected by the General Assembly, shall be subject to confirmation by the General Assembly by joint resolution.

(e) Vacancies, Interim Appointments. A vacancy in an appointive position shall be filled for the unexpired term in the same manner as the appointment of the person causing the vacancy was made. If a vacancy occurs while the General Assembly is not in session or when the General Assembly has recessed or adjourned for more than 10 days, the Governor may appoint any qualified person to serve without confirmation until the close of the 10th legislative day after the vacancy occurs, provided however, that no such interim appointment shall be valid beyond the expiration of the term. (1979, c. 896, s. 2.)

§ 115D-3. State Board of Education to establish department to administer system of educational institutions; employment of personnel in community college system. — The State Board of Education is authorized to establish and organize a department to provide State-level administration, under the direction of the Board, of a system of community colleges and technical institutes separate from the free public school system of the State. The Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the department. The personnel of the department shall be governed by the same policies as the personnel of the other departments of the Board of Education and shall be subject to the provisions contained in Article 2, Chapter 126 of the General Statutes; except the position of the State President or chief administrative officer of the department shall be exempt from the provisions of the State Personnel Act, and the compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board of Education, subject to approval by the Advisory Budget Commission.

The State President of the Community College System shall appoint all necessary administrative and supervisory employees who work under his direction in the administration of the Community College System, subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with the State Personnel Act.

The State Board of Education shall appoint an Advisory Council consisting of at least seven members to advise the Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. (1963, c. 448, s. 23; 1971, c. 1244, s. 14; 1975, c. 699, s. 5; 1979, c. 462, s. 2.)

Editor's Note. — Session Laws 1979, c. 896, s. 12, provides:

"The State Board of Community Colleges and Technical Institutes may adopt regulations beginning July 1, 1980, but no such regulations shall become effective prior to January 1, 1981."

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 3, effective January 1, 1981, will rewrite this section to read as follows:

"§ 115D-3. State Board of Community Colleges and Technical Institutes to establish department to administer systems of educational institutions; employment of personnel in community college system. — The State Board of Community Colleges and Technical Institutes is authorized to establish and organize a department to provide State-level administration, under the direction of the State Board, of a system of community colleges and technical institutes separate from the free public

school system of the State. The State Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the department.

The State Board shall elect a State President of the Department of Community Colleges. He shall be the chief administrative officer of the Department. The compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board, subject to approval by the Advisory Budget Commission.

The State President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Chapter, who shall be elected by the State Board on nomination of the State President. The State Board shall fix the compensation of the staff members it elects. These staff members shall include such officers as may be deemed desirable by the State President and the State Board. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional

development, and for State and federal programs administered by the State Board. In addition, the State President shall be assisted by such other employees as may be needed to carry out the provisions of this Chapter, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the State Board on recommendation of the State President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. The State Board shall appoint an advisory council consisting of at least seven members to advise the State Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. The State Board of Community Colleges and Technical Institutes shall have all other powers, duties, and responsibilities delegated to the State Board of Education affecting the Department of Community Colleges not otherwise stated in this Chapter."

§ 115D-4. Establishment and transfer of institutions. — The establishment of all community colleges and technical institutes shall be subject to the prior approval of the State Board of Education and each institution shall be established only in accordance with the provisions of this Chapter and the regulations, standards, and procedures adopted by the Board not inconsistent herewith. In no case, however, shall approval be granted by the Board for the establishment of an institution until it has been demonstrated to the satisfaction of the Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The approval of any new institution, or the conversion of any existing institution into a new type of institution, or the expenditures of any State funds for any capital improvements at existing institutions shall be subject to the prior approval of the State Board of Education, the Governor, and the Advisory Budget Commission. The expenditure of State funds at any institution herein authorized to be approved by the Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this Chapter. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14; 1977, c. 154, s. 1; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 4, effective January 1, 1981, will amend this section by substituting "the State Board" for "the Board" and "State

Board of Community Colleges and Technical Institutes" for "State Board of Education" throughout the section.

§ 115D-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc. for establishment and operation of extension units of the community college system; use of existing public school facilities.—(a) The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the 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 Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The 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 and financial accounting procedures.

(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 Education 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 Education may provide by general and uniform regulations for waiver of tuition and registration fees for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, local law enforcement officers, patients in State alcoholic rehabilitation centers, and prison inmates. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens.

(c) No course of instruction shall be offered by any community college or technical institute at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Education, without prior approval of the State Board of Education. Approval by the State Board of Education shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Education may delegate to the State President the power to make an initial approval, with final approval to be made by the State Board of Education. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Education.

(d) Community colleges and technical institutes shall assist in the pre-employment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. The State Board of Education 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 or technical institute 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) The State Board of Education is authorized to enter into agreements with local boards of education, upon approval by the Governor and the Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this Chapter for other institutions, subject to available funds.

On petition of a board of education of the school administrative unit in which an extension unit is proposed to be established, the State Board of Education may approve the use by the proposed institution of existing public school facilities, if the Board finds:

- (1) That an adequate portion of these facilities can be devoted to the exclusive use of the institution, and
- (2) That use of these facilities will be consistent with sound educational considerations. (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.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, ss. 5, 6 and 7, effective January 1, 1981, will amend this section by substituting "State Board of Community

Colleges and Technical Institutes" for "State Board of Education" and "the Board" and "the State Board" for "the Board" throughout the section.

§ 115D-6. Withdrawal of State support. — The State Board of Education may withdraw or withhold State financial and administrative support of any institutions subject to the provisions of this Chapter in the event that:

- (1) The required local financial support of an institution is not provided;
- (2) Sufficient State funds are not available;
- (3) The officials of an institution refuse or are unable to maintain prescribed standards of administration or instruction; or
- (4) Local educational needs for such an institution cease to exist. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 8, effective January 1, 1981, will amend this section by substituting

"The State Board of Community Colleges and Technical Institutes" for "The State Board of Education" at the beginning of the section.

§§ 115D-7 to 115D-11: Reserved for future codification purposes.

ARTICLE 2.

Local Administration.

§ 115D-12. Each institution to have board of trustees; selection of trustees. — (a) Each community college and technical institute established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, who shall be selected by the following agencies.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or

county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the judicial district where the institution is located shall fill the position or positions by appointment.

Group Three — four trustees, appointed by the Governor.

Group Four — the president of the student government or the chairman of the executive board of the student body of each community college and technical institute established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23; 1977, c. 823, ss. 1-4; 1979, c. 462, s. 2.)

§ 115D-13. Terms of office of trustees. — Trustees shall serve for terms of eight years, with the exception of the ex officio member, except that initially: For all institutions for which boards of trustees first shall be established pursuant to the provisions of this Chapter, terms of the members of each board shall be so set by the selecting agencies that the term of a member in each group in G.S. 115D-12(a) shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the board of trustees is established. Thereafter, all terms shall be eight years and shall commence on July 1. (1963, c. 448, s. 23; 1977, c. 823, s. 5; 1979, c. 462, s. 2.)

§ 115D-14. Board of trustees a body corporate; corporate name and powers; title to property. — The board of trustees of each institution shall be a body corporate with powers to enable it to acquire, hold, and transfer real and personal property, to enter into contracts, to institute and defend legal actions and suits, and to exercise such other rights and privileges as may be necessary for the management and administration of the institution in accordance with the provisions and purposes of this Chapter. The official title of each board shall be "The Trustees of" (filling in the name of the institution) and such title shall be the official corporate name of the institution.

The several boards of trustees shall hold title to all real and personal property donated to their respective institutions by private persons or purchased with funds provided by the tax-levying authorities of their respective institutions. Title to equipment furnished by the State shall remain in the State Board of Education. In the event that an institution shall cease to operate, title to all real and personal property donated to the institution or purchased with funds provided by the tax-levying authorities, except as provided for in G.S. 115D-14,

shall vest in the county in which the institution is located, unless the terms of the deed of gift in the case of donated property provides otherwise, or unless in the case of two or more counties forming a joint institution the contract provided for in G.S. 115D-71 provides otherwise. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting "State Board of Community Colleges and

Technical Institutes" for "State Board of Education" in the second sentence of the second paragraph.

§ 115D-15. Sale, exchange or lease of property. — When in the opinion of the board of trustees of any institution organized under the provisions of this Chapter, the use of any property, real or personal, owned or held by said board of trustees is unnecessary or undesirable for the purposes of said institution, the board of trustees, subject to prior approval of the State Board of Education, may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education or in accordance with provisions of G.S. 160A-274. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1969, c. 338; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting

"State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first sentence.

§ 115D-16. Elective officials serving as trustees. — The office of trustee of any institution established or operated pursuant to this Chapter is hereby declared to be an office which may be held by the holder of any elective office, as defined in G.S. 128-1.1(d), in addition to and concurrently with those offices permitted by G.S. 128-1.1. (1979, c. 462, s. 2.)

§ 115D-17. Compensation of trustees. — Trustees shall receive no compensation for their services but shall receive reimbursement, according to regulations adopted by the State Board of Education, for cost of travel, meals, and lodging while performing their official duties. The reimbursement of the trustees from State funds shall not exceed the amounts permitted in G.S. 138-5. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting

"State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first sentence.

§ 115D-18. Organization of boards; meetings. — At the first meeting after its selection, each board of trustees shall elect from its membership a chairman, who shall preside at all board meetings, and a vice-chairman, who shall preside in the absence of the chairman. The trustees shall also elect a secretary, who may be a trustee, to keep the minutes of all board meetings. All three officers of the board shall be elected for period of one year but shall be eligible for reelection by the board.

Each board of trustees shall meet as often as may be necessary for the conduct of the business of the institution but shall meet at least once every three months. Meetings may be called by the chairman of the board or by the chief administrative officer of the institution. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-19. Removal of trustees. — Should the State Board of Education have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the State Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at that meeting a representative of the State Board of Education may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two-thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — "State Board of Community Colleges and Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting Technical Institutes" for "State Board of Education" in two places in the first sentence.

§ 115D-20. Powers and duties of trustees. — The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Education. The powers and duties of trustees shall include the following:

- (1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Education.
- (2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Education. Trustees may delegate the authority of employing such other personnel to its president or chief administrative officer.
- (3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Education, and, if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in Article 2, Chapter 40 of the General Statutes. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.
- (4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Education.
- (5) To receive and accept donations, gifts, bequests, and the like from private donors and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Education.
- (6) To provide all or part of the instructional services for the institution by contracting with other public or private organizations or institutions in accordance with regulations and standards adopted by the State Board of Education.

- (7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “State Board of Education” throughout the section.

§ 115D-21. Traffic regulations; fines and penalties. — (a) All of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State of North Carolina and the operation of motor vehicles thereon shall apply to the streets, roads, alleys and driveways on the campuses of all institutions in the North Carolina Community College System. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on the streets, roads, alleys and driveways on the campuses of institutions in the North Carolina Community College System shall, upon conviction thereof, be punished as prescribed in this section and as provided by Chapter 20 of the General Statutes relating to motor vehicles. Nothing contained in this section shall be construed as in any way interfering with the ownership and control of the streets, roads, alleys and driveways on the campuses of institutions in the system as is now vested by law in the trustees of each individual institution in the North Carolina Community College System.

(b) The trustees are authorized and empowered to make additional rules and regulations and to adopt additional ordinances with respect to the use of the streets, roads, alleys and driveways and to establish parking areas on or off the campuses not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. Upon investigation, the trustees may determine and fix speed limits on streets, roads, alleys, and driveways subject to such rules, regulations, and ordinances, lower than those provided in G.S. 20-141. The trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of rules, regulations and ordinances. All rules, regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the trustees; shall be printed; and copies of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such rules, regulations, or ordinances shall, upon conviction thereof in a legally constituted court of the State of North Carolina, be guilty of a misdemeanor, and shall be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment for a period of time not to exceed 30 days or, in the discretion of the court, both such fine and imprisonment.

(c) The trustees may by rules, regulations, or ordinances provide for a system of registration of all motor vehicles where the owner or operator does park on the campus or keeps said vehicle on the campus. The trustees shall cause to be posted at appropriate places on campus notice to the public of applicable parking and traffic rules, regulations, and ordinances governing the campus over which it has jurisdiction. The trustees may by rules, regulations, or ordinances establish or cause to have established a system of citations that may be issued to owners or operators of motor vehicles who violate established rules, regulations, or ordinances. The trustees shall provide for the administration of said system of citations; establish or cause to be established a system of fines to be levied for the violation of established rules, regulations and ordinances; and enforce or cause to be enforced the collection of said fines. The fine for each offense shall not exceed five dollars (\$5.00), which funds shall be retained in the

institution and expended in the discretion of the trustees. The trustees shall be empowered to exercise the right to prohibit repeated violators of such rules, regulations, or ordinances from parking on the campus. (1971, c. 795, ss. 1-3; 1979, c. 462, s. 2.)

§ 115D-22. State Retirement System for Teachers and State Employees; social security. — Solely for the purpose of applying the provisions of Chapter 135 of the General Statutes of North Carolina, "Retirement System for Teachers and State Employees, Social Security," the institutions of this Chapter are included within the definition of the term "Public school," and the institutional employees are included within the definition of the term "Teacher," as these terms are defined in G.S. 135-1. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-23. Workmen's Compensation Act applicable to institutional employees. — The provisions of Chapter 97 of the General Statutes of North Carolina, the Workmen's Compensation Act, shall apply to all institutional employees. The State Board of Education shall make the necessary arrangements to carry out those provisions of Chapter 97 which are applicable to employees whose wages are paid in whole or in part from State funds. The State shall be liable for compensation, based upon the average weekly wage as defined in the act, of an employee regardless of the portion of his wage paid from other than State funds.

The board of trustees of each institution shall be liable for workmen's compensation for employees whose salaries or wages are paid by the board entirely from local public or special funds. Each board of trustees is authorized to purchase insurance to cover workmen's compensation liability and to include the cost of insurance in the annual budget of the institution.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to institutions for any purpose, and such a person, firm, or corporation shall not be liable for the payment of any sum of money under the provisions of this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Editor's Note. — Section 97-1.1 provides that references to "workmen's compensation" shall be deemed to refer to "workers' compensation."

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the second sentence of the first paragraph.

§ 115D-24. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance. — The board of trustees of any institution, by obtaining liability insurance as provided in G.S. 115D-53, is authorized to waive its governmental immunity from liability for the death or injury of person or for property damage caused by the negligence or tort of any agent or employee of the board of trustees when the agent or employee is acting within the scope of his authority or the course of his employment. All automobiles, buses, trucks, or other motor vehicles intended primarily for use on the public roads and highways which are the property of a board of trustees shall be insured at all times with liability insurance as provided in G.S. 115D-53. Governmental immunity shall be deemed to have been waived by the act of obtaining liability insurance, but only to the extent that the board is indemnified for the negligence or torts of its agents and employees and only as to claims arising after the procurement of liability insurance and while such insurance is in force. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-25. Purchase of annuity or retirement income contracts for employees. — Notwithstanding any provision of law relating to salaries or salary schedules for the pay of faculty members, administrative officers, or any other employees of community colleges or technical institutes, the board of trustees of any of the above institutions may authorize the finance officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for reductions in salaries below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to in this section shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education. Notwithstanding any other provisions of this section or law, the amount by which the salary of any officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 366; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — “State Board of Community Colleges and Session Laws 1979, c. 896, s. 13, effective Jan. 1, Technical Institutes” for “State Board of 1981, will amend this section by substituting Education” in the next-to-last sentence.

§§ 115D-26 to 115D-30: Reserved for future codification purposes.

ARTICLE 3.

Financial Support.

§ 115D-31. State financial support of institutions. — (a) The State Board of Education shall be responsible for providing from sources available to the Board funds to meet the financial needs of institutions, as determined by policies and regulations of the Board, for the following budget items:

- (1) Capital outlay: Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the Board. Provided, the State Board of Education may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase, construction and remodeling of institutional buildings determined by the State Board of Education to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amounts of matching State funds, local funds shall include

local expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college or technical institute pursuant to the provisions of this Chapter, when such expenditures were made for the purchase, construction, and remodeling of institutional buildings subsequently determined by the State Board of Education to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State.

(2) Current expenses:

a. General administration:

1. Salaries and travel of trustees and administrative staff.
2. Cost of bonding institutional employees for the protection of State funds and property.
3. Office expenses.
4. Other costs of general administration approved by the State Board.

b. Instructional services:

1. Salaries and travel of instructional staff and clerical employees.
2. Instructional supplies and materials.
3. Commencement expenses.
4. Other costs of instructional services approved by the State Board.

c. Maintenance of plant: Maintenance and replacement of furniture and equipment furnished by the State.

d. Fixed charges:

1. Employer's contributions to social security and State retirement funds for the portion of institutional employees' salaries paid from State and federal funds.
2. Cost of workmen's compensation for institutional employees paid in whole or in part from State or federal funds.

e. Auxiliary services:

1. Operation of libraries, including salaries and travel of staff; replacement of books; and costs of supplies, materials, periodicals, and newspapers.
2. Other costs of auxiliary services approved by the Board.

(3) Current expense of operating an institution's motor vehicles to support any of the budget items in subdivision (2) of this subsection shall be reimbursable from State funds.

(4) Additional support for regional institutions as defined in G.S. 115D-2(4) above: Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32. The amount of matching funds to be provided by the State under this section shall be determined as follows: the population of the administrative area in which the regional institution is located shall be called the "local factor"; the combined populations of all the other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32 has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest U. S. census.

(b) The State Board of Education is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 946, s. 1.)

Editor's Note. — The 1979 amendment added subdivision (3) of subsection (a) and renumbered the original subdivision (3) as subdivision (4) of subsection (a).

Section 97-1.1 provides that references to "workmen's compensation" shall be deemed to refer to "workers' compensation."

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting "State Board of Community Colleges and Technical Institutes" for "State Board of Education" throughout the section.

§ 115D-32. Local financial support of institutions. — (a) The tax-levying authority of each institution shall be responsible for providing, in accordance with the provisions of G.S. 115D-33 or 115D-34, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

- (1) Capital outlay: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase of all equipment necessary for the maintenance of buildings and grounds and operation of plants; and purchase of all furniture and equipment not provided for administrative and instructional purposes.
- (2) Current expenses:

a. General administration:

1. Cost of bonding institutional employees for the protection of local funds and property.
2. Cost of auditing local funds.
3. Cost of elections held in accordance with G.S. 115D-33 and 115D-35.
4. Legal fees incurred in connection with local administration and operation of the institution.

b. Operation of plant:

1. Wages of janitors, maids, and watchmen.
2. Cost of fuel, water, power, and telephones.
3. Cost of janitorial supplies and materials.
4. Cost of operation of motor vehicles.
5. Any other expenses necessary for plant operation.

c. Maintenance of plant:

1. Cost of maintenance and repairs of buildings and grounds.
2. Salaries of maintenance and repair employees.
3. Maintenance and replacement of furniture and equipment provided from local funds.
4. Maintenance of plant heating, electrical, and plumbing equipment.
5. Maintenance of all other equipment, including motor vehicles, provided by local funds.
6. Any other expenses necessary for maintenance of plant.

d. Fixed charges:

1. Rental of land, buildings, and equipment.
2. Cost of insurance for buildings, contents, motor vehicles, workmen's compensation for institutional employees paid from local funds, and other necessary insurance.

3. Employer's contribution to retirement and social security funds for that portion of institutional employees' salaries paid from local funds.
4. Any tort claims awarded against the institution due to the negligence of the institutional employees.

(b) The board of trustees of each institution may apply local public funds provided in accordance with G.S. 115D-33(a) or 115D-34(a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a supplemental current expense budget is submitted in accordance with G.S. 115D-45(3). (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Editor's Note. — Section 97-1.1 provides that references to "workmen's" compensation shall be deemed to refer to "workers' compensation."

§ 115D-33. Providing local public funds for institutions established under this Chapter; elections. — (a) Except as provided in G.S. 115D-34, the tax-levying authority of an institution may provide for local financial support of the institution as follows:

- (1) By appropriations from nontax revenues in a manner consistent with the Local Government Budget and Fiscal Control Act, provided the continuing authority to make such appropriations shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question in an election held for such purpose, or
- (2) By a special annual levy of taxes within a maximum annual rate which maximum rate shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question of establishing or increasing the maximum annual rate in an election held for such purpose or both, and
- (3) By issuance of bonds, in the case of capital outlay funds, provided that each issuance of bonds shall be approved by a majority of the qualified voters of each county of the administrative area who shall vote on the question in an election held for that purpose. All bonds shall be subject to the Local Government Finance Act (Chapter 159) and shall be issued pursuant to Subchapter IV, Long-Term Financing, (§ 159-43 et seq.) of Chapter 159 of the General Statutes.

(b) At the election on the question of approving authority of the board of commissioners of each county in an administrative area (the tax-levying authority) to appropriate funds from nontax revenues or a special annual levy of taxes or both, the ballot furnished the qualified voters in each county may be worded substantially as follows: "For the authority of the board of commissioners to appropriate funds either from nontax revenues or from a special annual levy of taxes not to exceed an annual rate of cents per one hundred dollars (\$100.00) of assessed property valuation, or both, for the financial support of (name of the institution)" plus any other pertinent information and "Against the authority of the board of commissioners, etc.," with a square before each proposition, in which the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section.

(c) The question of approving authority to appropriate funds, to levy special taxes and the question of approving an issue of bonds, when approval of each or both shall be necessary for the establishment or conversion of an institution, shall be submitted at the same election.

(d) All elections shall be held in the same manner as elections held under Article 4, Chapter 159, of the General Statutes, the Local Government Bond Act, and may be held at any time fixed by the tax-levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.

(e) The State Board of Education shall ascertain that authority to provide adequate funds for the establishment and operation of an institution has been approved by the voters of a proposed administrative area before granting final approval for the establishment of an institution.

(f) Notwithstanding any present provisions of this Chapter, the tax-levying authority of each institution may at its discretion and upon its own motion provide by appropriations of nontax revenue, tax revenue, or both, funds for the support of institutional purposes as set forth in G.S. 115D-32; but nothing herein shall be construed to authorize the issuance of bonds without a vote of the people. (1963, c. 448, s. 23; 1971, c. 402; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — “State Board of Community Colleges and Technical Institutes” for “State Board of Education” in subsection (e).

§ 115D-34. Providing local public funds for institutions previously established. — (a) For counties in which, immediately prior to the enactment of this Chapter, there was in operation or authorized a public community college or industrial education center which hereafter shall be operated pursuant to the provisions of this Chapter, the following provisions shall apply in providing local financial support for each such institution:

(1) Community colleges: The board of commissioners of a county in which is located a public community college heretofore operated or authorized to operate pursuant to Article 3, Chapter 116, of the General Statutes of North Carolina, may continue to levy special taxes annually for the local financial support of the college as provided in G.S. 115D-32, to the maximum rate last approved by the voters of the county in accordance with the above Article. The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the Local Government Budget and Fiscal Control Act, from nontax revenues. The question of increasing the maximum annual rate of a special tax may be submitted at an election held in accordance with the provisions of G.S. 115D-33(d) and the appropriate provisions of G.S. 115D-35.

(2) Industrial education centers: The board of commissioners of a county in which is located an industrial education center heretofore operated or authorized to operate as part of the public school system and which hereafter shall be operated as a technical institute or community college as defined in this Chapter may levy special taxes annually at a rate sufficient to provide funds for the financial support of the institute or college as required by G.S. 115D-32(a). The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the Local Government Budget and Fiscal Control Act, from nontax revenues. The board of commissioners is authorized to provide additional funds, either by special tax levies or by appropriations from nontax revenues, or both, to an amount equal to that required to be provided above, for the purpose of supplementing the current expense budget of the institute or college financed from State funds.

(b) The board of commissioners of a county in which is located one of the above public community colleges or industrial education centers may provide

funds for capital outlay for such institution by the issuance of bonds. All bonds shall be issued in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.

(c) Public funds provided a community college or industrial education center prior to its becoming subject to the provisions of this Chapter and which remain to the credit of the institution upon its becoming subject to these provisions shall be expended only for the purposes prescribed by law when such funds were provided the institution. (1963, c. 448, s. 23; 1965, c. 842, s. 1; 1979, c. 462, s. 2.)

§ 115D-35. Requests for elections to provide funds for institutions. — (a) Formal requests for elections on the question of authority to appropriate nontax revenues or levy special taxes, or both, and to issue bonds, when such elections are to be held for the purpose of establishing an institution, shall be originated and submitted only in the following manner:

- (1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen percent (15%) of the number of qualified voters of the proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who may fix the time for such election by joint resolution which shall be entered in the minutes of each board.
- (2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen percent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who may fix the time for such election by resolution which shall be entered in the minutes of the board.

(b) Formal requests for elections on any of the questions specified in (a) above, or on the question of increasing the maximum annual rate of special taxes for the financial support of an institution with a properly established board of trustees, may be submitted to the tax-levying authority only by such board of trustees.

(c) All formal requests for elections regarding the levy of special taxes shall state the maximum annual rate for which approval is to be sought in an election.

(d) Nothing in this section shall be construed to deny or limit the power of the tax-levying authority of an institution to hold elections, of its own motion, on any or all the questions provided in this section, subject to the provisions of this Article. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-36. Elections on question of conversion of institutions and issuance of bonds therefor. — Whenever the board of trustees of an institution requests the State Board of Education to convert the institution from a technical institute to a community college, the Board shall require, as a prerequisite to such conversion:

- (1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the converted institution, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.
- (2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the conversion of the institution, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “State Board of Education” in the introductory paragraph.

§ 115D-37. Payment of expenses of special elections under Chapter. — The cost of special elections held under the authority of this Chapter in connection with the establishment of an institution shall be paid out of the general fund of the county or counties which shall conduct such elections. All special elections held on behalf of a duly established institution shall be paid by such institution and the expenses may be included in the annual institutional budgets. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-38. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues. — Counties are authorized to issue bonds and notes and to levy special taxes to meet payments of principal and interest on such bonds or notes and to levy special taxes for the special purpose of providing local financial support of an institution and otherwise to appropriate nontax revenues for the financial support of an institution, in the manner and for the purposes provided in this Chapter.

Taxes authorized by this section are declared to be for a special purpose and may be levied notwithstanding any constitutional limitation or limitations imposed by any general or special law. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-39. Student tuition and fees. — The State Board of Education may fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Education.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and 116-143.2, shall apply to students attending institutions operating pursuant to this Chapter. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “State Board of Education” in the first and second paragraphs.

§§ 115D-40 to 115D-44: Reserved for future codification purposes.

ARTICLE 4.

Budgeting, Accounting, and Fiscal Management.

§ 115D-45. Preparation and submission of institutional budgets. — On or before the first day of May of each year, the trustees of each institution shall prepare and submit a capital outlay budget and a current expense budget, on forms provided by the State Board of Education, and may prepare in their discretion a supplemental current expense budget. The budgets shall be prepared and submitted for approval according to the following procedures:

- (1) Capital outlay budget: The budget shall contain the items of capital outlay, as provided in G.S. 115D-31 and 115D-32, for which funds are requested, from whatever source. The budget shall be submitted first to the tax-levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax-levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, that portion of the budget requesting State or federal funds.
- (2) Current expense budget: The budget shall contain the items of current operating expenses, as provided in G.S. 115D-31 and 115D-32, for which funds are requested, from whatever source. The budget shall be submitted first to the tax-levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax-levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, the entire budget. The State Board is authorized to withhold the allocation of State funds to an institution until a budget has been submitted to and approved by the Board.
- (3) Supplemental current expense budget: The budget may contain any items of the current expense budget to be financed from State or federal funds which the trustees desire to supplement with local funds. The tax-levying authority shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. An information copy of the budget as approved shall be filed with the State Board of Education.
- (4) No public funds shall be provided an institution, either by the tax-levying authority or by the State, except in accordance with the budget provisions of this Chapter.
- (5) The preparation of a budget for and the payment of interest and principal on indebtedness incurred on behalf of an institution shall be the responsibility of the county finance officer or county finance officers of the administrative area and the board of trustees of the institution shall have no duty or responsibility in this connection. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting "State Board of Community Colleges and

Technical Institutes" for "State Board of Education" in the introductory paragraph and in subdivisions (1), (2) and (3).

§ 115D-46. Administration of institutional budgets for local public funds.

— (a) Duty of board of trustees. It shall be the duty of the board of trustees of each institution to pay all obligations incurred in the operation of the institution promptly and when due, and to this end boards of trustees shall inform the tax-levying authority from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations, in order that the tax-levying authority may make provision for the funds to be available. If a board of trustees shall willfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax-levying authority, the indebtedness shall not be a valid obligation of the institution and the members of the board responsible for creating the debt may be held personally liable for the same.

(b) Duty of tax-levying authorities: It shall be the duty of the tax-levying authority of each institution to provide, as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expense, as set forth in a statement prepared by the board of trustees and in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax-levying authority to borrow against the amount approved in the budget and to issue short-term notes for the amount so borrowed in accordance with the provisions of Subchapter IV, Long-Term Financing, of Chapter 159 of the General Statutes. The interest on all such notes shall be provided by the tax-levying authority in addition to the amount approved in the budget, unless this item is specifically included in the budget. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-47. Payment of State and local public funds to boards of trustees.

— (a) The State Board of Education may deposit funds in the State treasury to the credit of each institution in monthly installments, at such time and in such manner as may be necessary to meet the needs of the institution, or the Board may disburse State funds to each institution under policies and regulations established by the Board. Prior to the deposit or disbursement of State funds by the Board it shall be the duty of the board of trustees of each institution to file, on or before the first day of each month, with the State Board of Education a certified statement, on forms provided by the State Board of Education, of all expenditures, salaries, and other obligations that may be due and payable in the next succeeding month.

(b) Upon the basis of an approved budget, the county finance officer or corresponding official of all counties of the administrative area of an institution shall determine the proportion of taxes, nontax revenues and other funds accruing to the current expense and capital outlay budgets of the institution and shall credit these funds to the institution as they are collected. The county finance officer or corresponding official of each county shall remit promptly at the end of each month all funds collected for current expenses and capital outlay, except bond funds, to the board of trustees of the institution.

In the event that a greater amount is collected and paid to the board of trustees of an institution than is authorized by its approved budgets for current expenses and capital outlay, the excess shall remain an unencumbered balance to be credited proportionally to those funds in the following fiscal year, and such excess shall not be spent, committed, or obligated unless the budget is revised with the approval of the board of trustees and the tax-levying authority.

(c) Funds received by the trustees of an institution from insurance payments for loss or damage to buildings shall be used for the repair or replacement of such buildings or, if the buildings are not repaired or replaced, to reduce proportionally the institutional indebtedness borne by the counties of the administrative area of the institution receiving the insurance payments. If such payments which are not used to repair or replace institutional buildings exceed the total institutional indebtedness borne by all counties of the administrative area, such excess funds shall remain to the credit of the institution and be applied to the next succeeding capital outlay budgets until the excess fund shall be expended. Funds received by the trustees of an institution for loss or damage to the contents of buildings shall be divided between the board of trustees and the State Board of Education in proportion to the value of the lost contents owned by the board of trustees and the State, respectively. That portion retained by the trustees shall be applied to the repair or replacement of lost contents or shall remain to the credit of the institution to be applied to the next succeeding capital outlay and current expense budgets, as appropriate, until such funds shall be expended. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting "State Board of Community Colleges and

Technical Institutes" for "State Board of Education" in three places in subsection (a) and in the third sentence of subsection (c).

§ 115D-48. Disbursement of institutional funds. — Public funds provided for an institution shall be paid out as follows:

- (1) State funds: All State funds received by or deposited to the credit of an institution shall be disbursed only upon warrants drawn on the State Treasurer and signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such funds may be disbursed in any other manner provided by regulations of the State Board of Education.
- (2) Local funds: All local public funds received by or credited to an institution shall be disbursed on warrants signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such warrants shall be countersigned by the appropriate county finance officer or officers as provided by law, but only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution: Provided, that in lieu of countersignature by the county finance officer or officers as provided by law, the board of county commissioners which appropriated the local public funds may from time to time, with the approval of the board of trustees of the institution, designate an employee of the institution to countersign the warrants, and the employee so designated shall countersign a warrant only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution. Each warrant shall be accompanied by an invoice, statement, voucher, or other basic document which indicates to the satisfaction of the countersigning county finance officer or officers that the issuance of such warrant is proper. (1963, c. 448, s. 23; 1965, c. 488, s. 2; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting "State Board of Community Colleges and

Technical Institutes" for "State Board of Education" in two places in subdivision (1) and in the first sentence of subdivision (2).

§ 115D-49. Purchase of equipment and supplies. — It shall be the duty of the several boards of trustees to purchase all supplies, equipment, and materials in accordance with contracts made by or with approval of the North Carolina Department of Administration. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment therefor, and in order to protect the State purchase contracts, it is the mandatory duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. Equipment shall be titled to the State Board of Education if derived from State or federal funds. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “Board of Education” in the last sentence.

§ 115D-50. Audits of institutional accounts. — The State Auditor shall be responsible for conducting annually a thorough post audit of the receipts, expenditures, and fiscal transactions of each institution.

The annual audits shall be completed as near to the close of the fiscal year as practicable and copies of each audit shall be filed with the chairman of the board of trustees, the executive head of the institution, the county auditor of each county of the administrative area, the State Board of Education, and the chairman of the Local Government Commission, inclusive of all accounts. (1963, c. 448, s. 2; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “State Board of Education” in the second paragraph.

§ 115D-51. Surety bonds. — The State Board of Education shall determine what State employees and employees of institutions shall give bonds for the protection of State funds and property and the Board is authorized to place the bonds and pay the premiums thereon from State funds.

The board of trustees of each institution shall require all institutional employees authorized to draw or approve checks or vouchers drawn on local funds, and all persons authorized or permitted to receive institutional funds from whatever source, and all persons responsible for or authorized to handle institutional property, to be bonded by a surety company authorized to do business with the State in such amount as the board of trustees deems sufficient for the protection of such property and funds. The tax-levying authority of each institution shall provide the funds necessary for the payment of the premiums of such bonds. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “State Board of Education” in the first paragraph.

§ 115D-52. Fire and casualty insurance on institutional buildings and contents. — (a) The board of trustees of each institution, in order to safeguard the investment in institutional buildings and their contents, shall

(1) Insure and keep insured each building owned by the institution to the extent of the current insurable value, as determined by the insured and insurer, against loss by fire, lightning, and the other perils embraced in extended coverage; and

(2) Insure and keep insured equipment and other contents of all institutional buildings that are the property of the institution or the State or which are used in the operation of the institution.

(b) The tax-levying authority of each institution shall provide the funds necessary for the purchase of the insurance required in (a) above.

(c) Boards of trustees may purchase insurance from companies duly licensed and authorized to sell insurance in this State or may obtain insurance in accordance with the provisions of Article 16, Chapter 115, of the General Statutes, “State Insurance of Public School Property.” (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-53. Liability insurance; tort actions against boards of trustees. —

(a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State. Each contract of insurance must by its terms adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

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

(e) The board of trustees of all institutions in this Chapter are authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§§ 115D-54 to 115D-58: Reserved for future codification purposes.

ARTICLE 5.*Special Provisions.*

§ 115D-59. Multiple-county administrative areas. — Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Education as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this Chapter, for financial support of the institution, selection of trustees, termination of the contract and the administrative area, and any other necessary provisions. The State Board of Education shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting

“State Board of Community Colleges and Technical Institutes” for “State Board of Education” in the first and third sentences.

§ 115D-60. Special provisions for Central Piedmont Community College.

— (a) The board of commissioners of Mecklenburg County is authorized to provide the local financial support for the Central Piedmont Community College as provided in G.S. 115D-32 by levying a special tax to a maximum annual rate equal to the maximum rate last approved by the voters of the county for the support of the Central Piedmont Community College as operated pursuant to Article 3, Chapter 116, of the General Statutes of North Carolina, or by appropriations from nontax revenues, or by both. The question of increasing the maximum annual rate may be submitted at an election held in accordance with the provisions of G.S. 115D-33(d) and the appropriate provisions of G.S. 115D-35.

(b) When, in the opinion of the board of trustees of said institution, the use of any building, building site, or other real property owned or held by said board is unnecessary or undesirable for the purposes of said institution the board of trustees may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1963, c. 448, s. 23; 1965, c. 402; 1979, c. 462, s. 2.)

§ 115D-61. Special provisions for Coastal Carolina Community College. —

All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution under its present name. (1967, c. 279; 1979, c. 462, s. 2.)

§ 115D-62. Trustee Association Regions. — The State is divided into six Trustee Association Regions as follows:

Region 1: The counties of Buncombe, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, McDowell, Polk, Rutherford, Swain, and Transylvania.

Region 2: The counties of Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Madison, Mitchell, Rowan, Surry, Watauga, Wilkes, Yadkin, and Yancey.

Region 3: The counties of Alamance, Chatham, Davidson, Caswell, Durham, Forsyth, Franklin, Granville, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Vance, Warren, and Wake.

Region 4: The counties of Anson, Cabarrus, Cumberland, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Richmond, Robeson, Scotland, Stanly, and Union.

Region 5: The counties of Bladen, Brunswick, Carteret, Craven, Columbus, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, and Wayne.

Region 6: The counties of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Martin, Nash, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, Washington, and Wilson. (1979, c. 896, s. 9.)

§§ 115D-63 to 115D-67: Reserved for future codification purposes.

ARTICLE 6.

Textile Training School.

§ 115D-68. Creation of board of trustees; members and terms of office; no compensation. — The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of nine members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30; 1969, c. 479; 1979, c. 462, s. 2.)

§ 115D-69. Powers of board. — The said board of trustees shall hold all the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said school, and within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said school. Provided, however, that the said board of trustees is not authorized to accept any such funds upon any condition that said school shall be operated contrary to any provision of the Constitution or statutes of this State. (1955, c. 1372, art. 27, s. 2; 1963, c. 448, s. 30; 1979, c. 462, s. 2.)

§ 115D-70. Board vested with powers and authority of former boards. — The board of trustees acting under authority of this Article is vested with all the powers and authority of the board created under authority of Chapter 360 of the Public Laws of 1941, and the board created under authority of Chapter 806 of the Session Laws of 1971. (1955, c. 1372, art. 27, s. 3; 1963, c. 448, s. 30; 1979, c. 462, s. 2.)

§ 115D-71. Persons eligible to attend institution; subjects taught. — Persons eligible for attendance upon this institution shall be at least 16 years of age and legal residents of the State of North Carolina, as set forth in G.S. 116-143.1 and 116-143.2: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of tuition, the amount of tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1955, c. 1372, art. 27, s. 4; 1963, c. 448, s. 30; 1979, c. 462, s. 2.)

§§ 115D-72 to 115D-76: Reserved for future codification purposes.

ARTICLE 7.

Miscellaneous Provisions.

§ 115D-77. Nondiscrimination policy. — It is the policy of the State Board of Education and of local boards of trustees of the State of North Carolina not to discriminate among students on the basis of race, gender or national origin.

In the employment of professional and all other personnel for institutions operating pursuant to this Chapter, neither the State Board of Education nor local boards of trustees shall discriminate on the basis of race, gender or national origin. (1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — “State Board of Community Colleges and Technical Institutes” for “State Board of Education” in the first and second paragraphs.

§ 115D-78. Access to information and public records. — In accordance with Chapter 132 of the General Statutes, all rules, regulations and public records of the State Board of Education, the Department of Community Colleges, and local boards of trustees shall be available for examination and reproduction on payment of fees by any person. (1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — “State Board of Community Colleges and Technical Institutes” for “State Board of Education.”

§ 115D-79. Open meetings. — All official meetings of the State Board of Education and of local boards of trustees shall be open to the public in accordance with the provisions of G.S. 143-318.1 through 143-318.7. (1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — “State Board of Community Colleges and Technical Institutes” for “State Board of Education.”

§ 115D-80. Rule-making procedure. — As an agency of the State, the State Board of Education is subject to the North Carolina Administrative Procedure Act, G.S. 150A-1 through 150A-64. The State Board of Education’s procedures for rule-making, promulgation of rules, and the handling of contested matters shall be as set forth in those sections. Local boards of trustees are exempt from the Administrative Procedure Act. (1979, c. 462, s. 2.)

Amendment Effective January 1, 1981. — Education in the first sentence and “State Board of Community Colleges and Technical Institutes’” for “State Board of Education’s” in the second sentence.

§ 115D-81. Saving clauses. — (a) Continuation of existing law. The provisions of this Chapter, insofar as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The repeal by the act enacting this Chapter of any statute or part thereof shall not revive any statute or part thereof previously repealed or suspended. The provisions of this section shall not affect title to, or ownership of, any real or personal

property vested before the effective date of this section. This Chapter shall not in any way affect or repeal any local acts in conflict with the terms of this Chapter.

(b) Existing rights and liabilities. The provisions of this Chapter shall not affect any act done, liability incurred or right accrued or vested, or affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of statutes repealed by the act enacting this Chapter. (1979, c. 462, s. 2.)

Chapter 116.**Higher Education.****Article 1.****The University of North Carolina.****Part 2. Organization, Governance and
Property of the University.**

Sec.

116-11. Powers and duties generally.

Part 3. Constituent Institutions.

116-36.1. Regulation of institutional trust funds.

116-36.2. Regulation of special funds of individual institutions.

116-36.3. Regulation of institutional student auxiliary enterprise funds.

116-37.1. Center for public television.

Part 6. Traffic and Parking.

116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina.

Article 4.**North Carolina School of the Arts.**

116-65. To be part of University of North Carolina; membership of Board of Trustees.

Article 14.**General Provisions as to Tuition and Fees in
Certain State Institutions.**

116-143.1. Provisions for determining resident status for tuition purposes.

Article 21.**Revenue Bonds for Student Housing.****Student Activities, Physical
Education and Recreation.**

Sec.

116-187. Purpose of Article.

116-189. Definitions.

Article 23.**State Education Assistance Authority.**

116-201. Purpose and definitions.

116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.

116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.

116-209. Reserve trust fund created; transfer of escheat fund; pledge of security interest for payment of bonds; administration.

116-209.3. Additional powers.

116-209.4. Authority to issue bonds.

116-209.14. Annual reports.

116-209.17. Establishment of student assistance program.

116-209.19. Grants to students.

Article 24.**Learning Institute of North Carolina.**

116-210, 116-211. [Repealed.]

ARTICLE 1.***The University of North Carolina.*****Part 1. General Provisions.****§ 116-1. Purpose.**

Editor's Note. — Session Laws 1979, c. 340, s. 1, provides: "All laws or clauses of laws of a private, local or special nature as well as all statutes or provisions of statutes which specifically refer to The University of North Carolina at Chapel Hill and its environs, including the Town of Chapel Hill and the County of Orange, for the purpose of prohibiting or otherwise regulating the sale, barter,

transportation, importation, exportation, delivery, purchase or possession of intoxicating liquors there and which conflict with any provision of Chapter 18A of the General Statutes are hereby repealed."

University and Its Subdivisions Are "Alter-egos" of State for Diversity Purposes. — The University of North Carolina and the University of North Carolina at Chapel Hill are

“alter-egos” of the State of North Carolina for purposes of federal diversity jurisdiction. *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

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

§ 116-3. Incorporation and corporate powers.

University and Its Subdivisions Are “Alter-egos” of State for Diversity Purposes. — The University of North Carolina and the University of North Carolina at Chapel Hill are “alter-egos” of the State of North Carolina for purposes of federal diversity jurisdiction. *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

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

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-7. General provisions concerning members of the Board of Governors.

Banking Commissioners Are State Officers within Subsection (b). — A member of the State Banking Commission is an officer of the State within the meaning of subsection (b) of this section. *Sansom v. Johnson*, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 116-11. Powers and duties generally. — The powers and duties of the Board of Governors shall include the following:

(5a) Notwithstanding the provisions of G.S. 135(a)(2) [135-5(a)(2)] and 126-16, the Board of Governors of the University of North Carolina may by resolution provide that, until July 1, 1982, an employee who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at a constituent institution of the University of North Carolina shall retire on July 1, coincident with or next following his sixty-fifth birthday, provided that, upon approval of the Board of Trustees of the constituent institution, an employee may be continued in service on a year-to-year basis. (1979, c. 862, s. 8.)

Editor's Note. — The 1979 amendment, effective January 1, 1979, added subdivision (5a). By the terms of Session Laws 1979, c. 862, s. 10, the amendment to this section will expire on July 1, 1982.

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting “State Board of Community Colleges and Technical Institutes” for “State Board of Education” near the end of the second sentence and near the beginning of the third sentence of subdivision (1).

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

Open Meetings Law Inapplicable. — Since the board of governors of the University of North Carolina has no governmental powers, i.e., no powers peculiar to the sovereign, the board of governors is not, itself, a “governmental body of this State,” and the Open Meetings Law, § 143-318.2, does not extend to the meetings of its employees, even though such employees be deemed a “component part” of the board of governors. *Student Bar Ass'n Bd. of Governors v. Byrd*, 293 N.C. 594, 239 S.E.2d 415 (1977).

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-13. Powers of Board regarding property subject to general law.

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-15. Licensing of nonpublic educational institutions; regulation of degrees.

Amendment Effective January 1, 1981. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, will amend this section by substituting

“State Board of Community Colleges and Technical Institutes” for “State Board of Education” in subsection (d).

§ 116-16. Tax exemption.

Applied in *In re North Carolina Forestry Foundation, Inc.*, 35 N.C. App. 414, 242 S.E.2d 492 (1978); *In re North Carolina Forestry Foundation, Inc.*, 296 N.C. 330, 250 S.E.2d 236 (1979).

Cited in *In re North Carolina Forestry Foundation, Inc.*, 35 N.C. App. 430, 242 S.E.2d 502 (1978); *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

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

Editor's Note. — For a survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

Part 3. Constituent Institutions.**§ 116-35. Electric power plants, campus school, etc.**

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-36. Endowment fund.

(i) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television.

(j) Any gift, devise, or bequest of real or personal property to a constituent institution of the University of North Carolina or to the University of North Carolina or to the University of North Carolina Press or to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the respective institution or agency.

(1979, c. 649, ss. 2, 3.)

Editor's Note. —

The 1979 amendment added subsection (i) and inserted “or to the University of North Carolina Center for Public Television” in subsection (j).

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

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-36.1. Regulation of institutional trust funds. — (a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.

(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section, and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to G.S. 147-58 but are not subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Director of the Budget.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

- (1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;
- (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States Government or any agency or instrumentality thereof;
- (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;
- (4) Moneys collected by an institution to support extracurricular activities of students of the institution;
- (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;
- (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises except student auxiliary services identified in G.S. 116-36.3;
- (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the

institution or under a contractual agreement between the institution and a hospital or other health care provider.

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g) (7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1136, s. 47, makes the act effective July 1, 1978. Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

§ 116-36.2. Regulation of special funds of individual institutions. — (a) Notwithstanding any provisions of law other than G.S. 147-58, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for.

(b) As used in this section, "special funds of individual institutions" means:

- (1) Moneys received from or for the operation by an institution of its program of intercollegiate athletics;
- (2) Moneys held by an institution as fiscal agent for individual students, faculty, staff members, and organizations. (1977, 2nd Sess., c. 1136, s. 31.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1136, s. 47, makes the act effective July 1, 1978. Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

§ 116-36.3. Regulation of institutional student auxiliary enterprise funds. — (a) The chancellor of each institution, subject to uniform policies and procedures adopted by the Board of Governors, is responsible for the custody and management of the institutional student auxiliary enterprise funds of that institution. The custody and management of such funds is subject to the provisions of the Executive Budget Act and to the oversight of the State Auditor pursuant to G.S. 147-58.

(b) Institutional student auxiliary enterprise funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For the purpose of distribution of investment earnings, all student auxiliary enterprise funds of an institution shall be deemed a single account.

(c) As used in this section, "institutional student auxiliary enterprise funds" means moneys received from or for the operation by an institution of the following self-supporting student auxiliary services: housing; food; health and laundry. (1977, 2nd Sess., c. 1136, s. 32.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1136, s. 47, makes the act effective July 1, 1978. Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

§ 116-37.1. Center for public television. — (a) The Board of Governors is hereby authorized and directed to establish "the University of North Carolina Center for Public Television" (hereinafter called "the Center"). It shall be the functions of the Center, through itself or agencies with whom it may contract, to provide research, development, and production of noncommercial educational television programming and program materials; to provide distribution of noncommercial television programming through the broadcast facilities licensed to the University of North Carolina; and otherwise to enhance the uses of television for public purposes.

(b) The Center shall have a board of trustees, to be named "the Board of Trustees of the University of North Carolina Center for Public Television" (hereinafter called "the Board of Trustees"). The Board of Governors is hereby authorized and directed to establish the Board of Trustees of the Center and to delegate to the Board of Trustees such powers and duties as the Board of Governors deems necessary or appropriate for the effective discharge of the functions of the Center; provided, that the Board of Governors shall not be deemed by the provisions of this section to have the authority to delegate any responsibility it may have as licensee of the broadcast facilities of the University of North Carolina.

- (1) The Board of Trustees of the University of North Carolina Center for Public Television shall be composed of the following membership: eleven persons appointed by the Board of Governors; four persons appointed by the Governor; one Senator appointed by the President of the Senate; one member of the House of Representatives appointed by the Speaker of the House; and ex officio, the Secretary of the Department of Cultural Resources, the Secretary of the Department of Human Resources, the Superintendent of Public Instruction, the State President of the Community College System, and the President of the University of North Carolina. In making initial appointments to the Board of Trustees, the Board of Governors shall designate six persons for two-year terms and five persons for four-year terms, and the Governor shall designate two persons for two-year terms and two persons for four-year terms. Thereafter, the term of office of appointed members of the Board of Trustees of the Center shall be four years. In making appointments to the Board of Trustees the appointing authorities shall give consideration to promoting diversity among the membership, to the end that, in meeting the responsibilities delegated to it, the Board of Trustees will reflect and be responsive to the diverse needs, interests, and concerns of the citizens of North Carolina.
- (2) No person shall be appointed to the Board of Trustees who is an employee of the State or of any constituent institution; a public officer of the State as defined in G.S. 147-1, 147-2, and 147-3(c); a member of the Board of Governors; a trustee of a constituent institution; or the spouse of any of the foregoing. Any appointed member of the Board of Trustees who after appointment becomes any of the foregoing shall be deemed to have resigned from the Board of Trustees.
- (3) Each ex officio member of the Board of Trustees shall personally serve on the Board of Trustees but may designate in writing a proxy for specified meetings which the ex officio member finds he or she is unable reasonably to attend.
- (4) Each appointive member of the Board of Trustees shall personally serve on the Board of Trustees without benefit of proxy. Any appointive

member who fails, for any reason other than ill health or service in the the interest of the State or the nation, to attend three consecutive regular meetings of the Board of Trustees, shall be deemed to have resigned from the Board of Trustees.

- (5) Any vacancy which occurs during a term among the appointive membership of the Board of Trustees shall be filled for the remainder of the unexpired term by appointment of the original appointing authority for the vacant seat. The principal officer of the Board of Trustees shall promptly notify the Secretary of the University of North Carolina of the vacancy and the Secretary shall give written notice of the vacancy to the appropriate appointing authority.

(c) The chief administrative officer of the Center shall be a Director, who shall be elected by the Board of Governors upon recommendation of the President and who shall be responsible to the President. The Center shall have such other staff as the Board of Governors may authorize. (1979, c. 649, s. 1.)

Editor's Note. — Former § 116-37.1 was transferred to § 116-40.2 by Session Laws 1971, c. 1244, s. 10.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.1. Definitions.

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds, replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

Part 6. Traffic and Parking.

§ 116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina. — In addition to the powers granted by G.S. 116-42.1, the board of trustees of each of the constituent institutions enumerated hereinafter shall have the additional powers prescribed:

- (3a) The Board of Trustees of the University of North Carolina at Wilmington may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the City of Wilmington where parking is not prohibited by an ordinance of the City of Wilmington:
- a. "H" Street.

(1979, c. 238.)

Editor's Note. —

The 1979 amendment added subdivision (3a). As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3a) are set out.

ARTICLE 4.

North Carolina School of the Arts.

§ 116-65. To be part of University of North Carolina; membership of Board of Trustees. — The North Carolina School of Arts is a part of the University of North Carolina and subject to the provisions of Article 1, Chapter 116, of the General Statutes; provided, however, that notwithstanding the provisions of G.S. 116-31, the Board of Trustees of said school shall consist of 15 persons, 13 of whom are selected in accordance with provisions of G.S. 116-31, and the conductor of the North Carolina Symphony and the Secretary of the Department of Cultural Resources, both serving ex officio and nonvoting. (1963, c. 1116; 1971, c. 320, s. 4; c. 1244, s. 13; 1979, c. 562.)

Editor's Note. — The 1979 amendment, effective May 1, 1979, substituted "15" for "14" near the middle of the section, deleted "one of whom shall be" before "the conductor" near the

end of the section, and inserted "and the Secretary of the Department of Cultural Resources, both serving" near the end of the section.

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

Editor's Note. —

For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent pursuant to the North Carolina individual income tax provisions of G.S. 105-149(a)(5). The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

- (1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and
- (2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836.)

Editor's Note. —

- The first 1979 amendment added subsection (j).
The second 1979 amendment added subsection (k).

As the other subsections were not changed by the amendments, they are not set out.

For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

§ 116-144. Higher fees from nonresidents may be charged.

Editor's Note. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

ARTICLE 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.

Editor's Note. — For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions.

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-176. Issuance of bonds.

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

ARTICLE 21.

*Revenue Bonds for Student Housing, Student Activities,
Physical Education and Recreation.*

§ 116-187. Purpose of Article. — The purpose of this Article is to authorize the Board of Governors of the University of North Carolina to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at the institutions hereinafter designated, housing of faculty, adult or continuing education programs and for revenue-producing parking decks or structures, and for North Carolina Memorial Hospital. (1963, c. 847, s. 1; 1967, c. 1148, s. 1; 1971, c. 1061, s. 1; c. 1244, s. 16; 1979, c. 731, s. 6.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, added "and for North Carolina Memorial Hospital" at the end of the section.

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-188. Credit and taxing power of State not pledged; statement on face of bonds.

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-189. Definitions. — As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (4) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2 and North Carolina Memorial Hospital.
- (5) The word "project" shall mean and shall include any one or more buildings or facilities for (i) the housing, health, welfare, recreation and convenience of students, (ii) the housing of faculty, (iii) adult or continuing education, (iv) revenue-producing parking decks or structures, and (v) education, research, patient care and community services at North Carolina Memorial Hospital, of any size or type approved by the Board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student, faculty and adult or continuing education housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, infirmaries and other health care buildings, structures and facilities, academic facilities for adult or continuing education, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or adult or continuing education or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, offices, rooms and other

facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.

(1979, c. 731, s. 6.)

Editor's Note. — The 1979 amendment added "and North Carolina Memorial Hospital" at the end of subdivision (4), deleted "and" before "(iv)" near the beginning of the first sentence in subdivision (5) and inserted ", and (v) education, research, patient care and community services at

North Carolina Memorial Hospital," near the beginning of that sentence.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (4) and (5) are set out.

ARTICLE 23.

State Education Assistance Authority.

§ 116-201. Purpose and definitions.

(b) As used in this Article, the following terms shall have the following meanings unless the context indicates a contrary intent:

- (1) "Article" or "this Article" means this Article 23 of the General Statutes of North Carolina, presently comprising G.S. 116-201 through 116-109.23 [116-209.23];
- (2) "Authority" means the State Education Assistance Authority created by this Article or, if the Authority is abolished, the board, body, commission or agency succeeding to its principal functions, or on whom the powers given by this Article to the Authority shall be conferred by law;
- (3) "Bond resolution" or "resolution" when used in relation to the issuance of bonds is deemed to mean either any resolution authorizing the issuance of bonds or any trust agreement or other instrument securing any bonds;
- (4) "Bonds" or "revenue bonds" means the obligations authorized to be issued by the Authority under this Article, which may consist of revenue bonds, revenue refunding bonds, bond anticipation notes and other notes and obligations, evidencing the Authority's obligation to repay borrowed money from revenues, funds and other money pledged or made available therefor by the Authority under this Article;
- (5) "Eligible institution," with respect to student loans, has the same meaning as the term has in Section 1085 of Title 20 of the United States Code;
- (6) "Eligible institution," with respect to grants and work-study programs, includes all state-supported institutions organized and administered pursuant to Chapter 115A of the General Statutes and all private institutions as defined in subdivision (8) of this subsection;
- (7) "Student obligations" means student loan notes and other debt obligations evidencing loans to students which the Authority may take, acquire, buy, sell, endorse or guarantee under the provisions of this Article, and may include any direct or indirect interest in the whole or any part of any such notes or obligations;
- (8) "Private institution" means an institution other than a seminary, Bible school, Bible college or similar religious institution in this State that is not owned or operated by the State or any agency or political subdivision thereof, or by any combination thereof, that offers post-high school education and is accredited by the Southern Association of Colleges and Schools or, in the case of institutions that are not eligible to be considered for accreditation, accredited in those categories and by those nationally recognized accrediting agencies that the Authority may designate;

- (9) "Reserve Trust Fund" means the trust fund authorized under Section 116-209 of this Article;
- (10) "State Education Assistance Authority Loan Fund" means the trust fund so designated and authorized by Section 116-209.3 of this Article;
- (11) "Student" means a resident of the State, in accordance with definitions of residency that may from time to time be prescribed by the Board of Governors of the University of North Carolina and published in the residency manual of the Board, who, under regulations adopted by the Authority, has enrolled or will enroll in an eligible institution for the purpose of pursuing his education beyond the high school level, who is making suitable progress in his education in accordance with standards acceptable to the Authority and, for the purposes of G.S. 116-209.19, who has not received a bachelor's degree, or qualified for it and who is otherwise classified as an undergraduate under those regulations that the Authority may promulgate; and
- (12) "Student loans" means loans to residents of this State to aid them in pursuing their education beyond the high school level. (1965, c. 1180, s. 1; 1971, c. 392, s. 1; c. 1244, s. 14; 1979, c. 165, s. 1.)

Editor's Note. — The 1979 amendment, in subsection (b), rewrote subdivisions (1) through (8), added subdivisions (9) and (10), and rewrote former subdivisions (9) and (10) as present subdivisions (11) and (12).

As subsection (a) was not changed by the amendment, it is not set out.

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues. — In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No bonds, as this term is defined in this Article, are deemed to constitute a debt of the State, or of any political subdivision thereof or a pledge of the faith and credit of the State or of any political subdivision, but are payable solely from the funds of the Authority. All bonds shall contain on their faces a statement to the effect that neither the State nor the Authority is obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds provided under the provisions of this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this Article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1; 1979, c. 165, s. 2.)

Editor's Note. — The 1979 amendment, in the first sentence of the second paragraph, substituted "No bonds, as this term is defined in this Article, are" for "No act or undertaking of the Authority shall be" at the beginning of the sentence deleted "such" before "political subdivision, but" and substituted "are" for "shall be" preceding "payable" near the end of

the sentence. In the second sentence of the second paragraph, the amendment substituted "All bonds" for "All such acts and undertakings" at the beginning of the sentence, substituted "on their faces" for "on the face" near the beginning and "is" for "shall be" after "Authority" near the middle of the sentence, deleted "thereof" after "subdivision"

near the end of the sentence, and substituted "the bonds" for "such acts and undertakings" at the end of the sentence.

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors. — There is hereby created and constituted a political subdivision of the State to be known as the "State Education Assistance Authority." The exercise by the Authority of the powers conferred by this Article shall be deemed and held to be the performance of an essential governmental function.

The Authority shall be governed by a board of directors consisting of seven members, each of whom shall be appointed by the Governor. Two of the first members of the board appointed by the Governor shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and one for a term of four years from the date of their appointment; and thereafter the members of the board shall be appointed for terms of four years. Vacancies in the membership of the board shall be filled by appointment of the Governor for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are State, county, town and district officers. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary, or a secretary-treasurer, who may or may not be a member of the board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Four directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The favorable vote of at least a majority of the members of the board present at any meeting is required for the adoption of any resolution or motion or for other official action. The members of the board are entitled to the travel expenses, subsistence allowances and compensation provided in G.S. 138-5. These expenses and compensation shall be paid from funds provided under this Article, or as otherwise provided. (1965, c. 1180, s. 1; 1979, c. 165, s. 3.)

Editor's Note. — The 1979 amendment rewrote the last three sentences of the second paragraph.

§ 116-209. Reserve trust fund created; transfer of escheat fund; pledge of security interest for payment of bonds; administration. — The appropriation made to the Authority under this Article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this Article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The State Treasurer shall be the custodian of the assets of the Authority and shall invest them in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A

duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers.

The trust fund is designated "Reserve Trust Fund" and shall be maintained by the Authority, except as otherwise provided, pursuant to the provisions of this Article, as security for or insurance respecting any bonds or other obligations issued by the Authority under this Article. The corpus of the Escheat Fund, including all future additions other than the income, are transferred to, and become, a part of the Reserve Trust Fund and shall be accounted for, administered, invested, reinvested, used and applied as provided in G.S. 116A-8, 116A-9 and 116A-10. The Authority may pledge and vest a security interest in all or any part of the Reserve Trust Fund by resolution adopted or trust agreement approved by it as security for or insurance respecting the payment of bonds or other obligations issued under this Article. The Reserve Trust Fund shall be held, administered, invested, reinvested, used and applied as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of this Article and G.S. 116A-8 through 116A-11. (1965, c. 1180, s. 1; 1979, c. 165, s. 4; c. 467, s. 8.)

Editor's Note. —

The first 1979 amendment added the last paragraph.

The second 1979 amendment added "and shall invest them in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3" at the end of the first sentence of the second paragraph, and

deleted the former third and fourth paragraphs, which gave to the Authority full power to invest and reinvest trust funds and securities which are permitted for the investment of reserves of domestic life insurance companies, and gave the Authority the option to delegate its powers of investment to the State Treasurer.

§ 116-209.3. Additional powers. — The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to G.S. 116A-9. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of G.S. 116A-9 and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing

such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account. (1967, c. 1177; 1971, c. 392, s. 4; 1979, c. 165, s. 5.)

Editor's Note. — The 1979 amendment added the last two sentences of the first paragraph.

§ 116-209.4. Authority to issue bonds. — The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority in such principal amounts as the Board of Directors shall determine to be necessary. The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds, Series," inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 30 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this Article.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and

other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in G.S. 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Article and the provisions of the resolution authorizing the issuance of such bonds.

The Authority is authorized to provide by resolution or in any trust agreement for the issuance of revenue refunding bonds of the Authority for the purpose of refunding, or advance refunding and paying, any bonds then outstanding, which have been issued under the provisions of this Article, including the payment of any redemption premium and of any interest accrued or to accrue up to the date of redemption of the bonds, and, if deemed advisable by the Authority, for making student loans or acquiring obligations under this Article. The issuance of the revenue refunding bonds, the maturities and other details, the rights of the holders and the rights, duties and obligations of the Authority, shall be governed by the appropriate provisions of this Article relating to the issuance of revenue bonds. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article. If sold, in addition to any other authorized purpose, the proceeds may be deposited in an escrow or other trust fund and invested, in whole or in part, and with the earnings from the investments, may be applied to the purchase or to the redemption prior to, or to payment at maturity, of outstanding bonds, all as provided by resolution or in trust agreement securing the bonds. (1967, c. 1177; 1971, c. 392, ss. 5-7; 1979, c. 165, s. 6.)

Editor's Note. — The 1979 amendment substituted "in such principal amounts as the Board of Directors shall determine to be necessary" for "in an aggregate principal

amount outstanding at any time of not exceeding fifty million dollars (\$50,000,000)" at the end of the first sentence in the first paragraph and rewrote the last paragraph.

§ 116-209.14. Annual reports. — The Authority shall, following the close of each fiscal year, publish an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report shall set forth a complete operating and financial statement covering the operations of the Authority during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants. (1967, c. 1177; 1979, c. 165, s. 7.)

Editor's Note. — The 1979 amendment deleted "promptly" after "shall" near the beginning of the first sentence, substituted "publish" for "submit" near the middle of that

sentence, deleted "such" after "Each" near the beginning of the second sentence, and substituted "the" for "such" near the end of that sentence.

§ 116-209.17. Establishment of student assistance program. — The Authority is authorized, in addition to all other powers and duties vested or imposed under this Article, to establish and administer a statewide student assistance program for the purpose of removing, insofar as may be possible, the financial barriers to education beyond the high school level for needy North Carolina undergraduate students at public or private institutions in this State. This objective shall be accomplished through a comprehensive program under which the financial ability of each student and of his family, under standards prescribed by the Authority, is measured against the reasonable costs, as determined by the Authority, of the educational program which the student proposes to pursue. Needs of students for financial assistance shall, to the extent of the availability of funds from federal, State, institutional or other sources, be met through work-study programs, loans, grants and out-of-term employment, or a combination of these forms of assistance. With respect to grants made pursuant to this Article, no student is eligible to receive benefits under this student assistance program for a total of more than 45 months of full-time, post-high school level education. (1971, c. 392, s. 11; 1979, c. 165, s. 8.)

Editor's Note. — The 1979 amendment added and substituted "is" for "shall be" preceding "With respect to grants made pursuant to this Article" at the beginning of the last sentence "eligible" in the last sentence.

§ 116-209.19. Grants to students. — The Authority is authorized to make grants to students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Advisory Budget Commission, after consultation with the Secretary of Administration, Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Advisory Budget Commission after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that

may be available to the students, such as nonrepayable awards under the Basic Educational Opportunity Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46; 1979, c. 165, s. 9.)

Editor's Note. —

The 1979 amendment, in the second paragraph, transferred “among other factors” to its present location from its former location after “consideration to,” substituted “the” for

“such” after “available to” and added “Basic” near the middle of the paragraph, and added “or other student assistance programs created by federal law” at the end of the paragraph.

ARTICLE 24.

Learning Institute of North Carolina.

§§ 116-210, 116-211: Repealed by Session Laws 1979, c. 744, s. 8, effective January 1, 1980.

ARTICLE 26.

Liability Insurance of Self-Insurance.

§ 116-221. Sovereign immunity.

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

Chapter 116A.

Escheats and Abandoned Property.

Sec.

116A-8. Escheat Fund.

§ 116A-1. Escheats to Escheat Fund.

Cross Reference. — As to transfer of corpus of escheat fund to reserve trust fund, see § 116-209.

§ 116A-8. Escheat Fund.

(c) The State Treasurer shall be the custodian of the Escheats Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3. (1971, c. 1135, s. 3; 1975, c. 113; 1979, c. 467, s. 9.)

Editor's Note. —

The 1979 amendment substituted "be the custodian of the Escheats Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3" for "deposit or invest the Escheat Fund in the same manner that

the Board of Trustees Teachers' and State Employees' Retirement System may invest and reinvest under the provisions of G.S. 135-7 and 135-7.1" at the end of subsection (c).

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

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1979

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1979 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN

Attorney General of North Carolina

