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THE GENERAL STATUTES OF NORTH CAROLINA

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1985 CUMULATIVE SUPPLEMENT

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

Under the Direction of
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Volume 3A, Part II

Chapters 113 to 116B

1983 Replacement

Annotated through 329 S.E.2d 896. For complete scope of
annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume.

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Preface

This Cumulative Supplement to Replacement Volume 3A, Part II contains the general laws of a permanent nature enacted by the General Assembly through the 1985 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

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

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

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

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

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

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1985 Regular Session affecting Chapters 113 through 116B of the General Statutes.

Annotations:

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

North Carolina Reports through Volume 313, p. 337.

North Carolina Court of Appeals Reports through Volume 73, p. 335.

South Eastern Reporter 2nd Series through Volume 329, p. 896.

Federal Reporter 2nd Series through Volume 761, p. 712.

Federal Supplement through Volume 607, p. 1490.

Federal Rules Decisions through Volume 105, p. 250.

Bankruptcy Reports through Volume 48, p. 873.

Supreme Court Reporter through Volume 105, p. 2370.

North Carolina Law Review through Volume 63, p. 809.

Wake Forest Law Review through Volume 20, p. 540.

Campbell Law Review through Volume 7, p. 298.

Duke Law Journal through 1983, p. 1142.

North Carolina Central Law Journal through Volume 14, p. 680.

Opinions of the Attorney General.

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VOLUME 3A, PART II

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SUBCHAPTER I. GENERAL PROVISIONS**ARTICLE 1C.***Commission on International Cooperation.*

§§ 113-28.17 to 113-28.20: Reserved for future codification purposes.

ARTICLE 1D.*Community Action Partnership Act.***§ 113-28.21. Short title.**

This Article may be cited as the Community Action Partnership Act. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this Article effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

§ 113-28.22. Purpose.

It is the purpose of this Article to provide financial assistance to Community Action Agencies and Limited Purpose Agencies (hereinafter referred to as "agency" or "agencies") to enable those agencies to effectively mobilize public and private resources in order to promote economic self-sufficiency among the poor of the State and to expand those services to all political subdivisions of the State. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1.)

§ 113-28.23. Designation of administering agency powers and responsibilities.

The Department of Natural Resources and Community Development (hereinafter "Department") is directed to carry out the purposes and provisions of this Article. In carrying out this directive, the Secretary of the Department (hereinafter "Secretary") shall promulgate rules consistent with the purposes and provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1.)

§ 113-28.24. Designation of eligible agencies.

The Secretary shall designate agencies to fulfill the requirements of this Article in the service areas governed by one or more units of local government. An agency so designated may be one of the following:

- (1) Agencies which have been officially designated as community action agencies or limited purpose agencies pursuant to Section 210 of the Economic Opportunity Act of 1964, Public Law 88-452, 78 Stat. 508 and which have not lost their designation as a result of a failure to comply with the provisions of that act.
- (2) Private nonprofit agencies designated by the chief elected official of a political subdivision or one or more political subdivisions, in areas not served by agencies as defined in subdivision (1) of this section on July 1, 1984. Agencies eligible under this subdivision must apply to the Secretary for designation 60 days in advance of the beginning date of their fiscal year. Political subdivisions designated under this section are authorized to join existing community action agencies contiguous with their boundaries or to organize their own community action agency in order to provide services pursuant to this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1.)

§ 113-28.25. Activities of Community Action Agency.

Agencies shall serve as the local catalyst for the reduction of the causes, conditions, and effects of poverty and shall provide social and economic opportunities that foster self-sufficiency for low-income persons. As such, agencies designated pursuant to G.S. 113-28.24(1) shall be sponsors of the Community Services Block Grant and any successor program thereto. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1.)

§ 113-28.26. Organization and authority.

(a) Agencies, as provided in G.S. 113-28.24 shall have or be required to establish a governing board of directors which shall consist of not less than 15 nor more than 51 members. One-third of the members shall be low-income, elderly, or handicapped consumers residing in the service area of the agency. Consumer representatives shall be selected through a democratic process pursuant to guidelines established by the Department. Not less than one-third of the members of the board shall be appointed by the chief elected officials in the service area. The remaining positions on the board, if any, shall be filled by officials or members of business, industry, labor, religious, welfare, education, or civic organizations located in the service area.

(b) The board of directors shall be responsible for all of the following:

- (1) The appointment and dismissal of an executive director.

- (2) The approval of contracts, budgets, requests, and major modifications of budgets and contracts.
- (3) The performance of an annual audit by certified public accountants to include all assets, liabilities, revenue, and expenditures.
- (4) The establishment of policies for the operation of the agency.
- (5) Annually advising the chief elected officials of the units of local government within the service area of the nature and extent of poverty within the area. Included in this annual report will be an assessment of the community action agency policies and programs and their impact on the problems of poverty in the service area.
- (6) The convening of public meetings to provide low-income and other persons the opportunity to comment upon public policies and programs to reduce poverty. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29.1. Growing of timber on unused State lands authorized.

Local Modification. — Granville County: 1983 (Reg. Sess., 1984), c. 1027.

§ 113-35. State timber may be sold by Department of Natural Resources and Community Development; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.

CASE NOTES

Cited in *Smith v. Watson*, 71 N.C. App. 351, 322 S.E.2d 588 (1984).

ARTICLE 4D.

Fire Fighters on Standby Duty.

§ 113-60.32. Definitions.

As used in this Article:

- (1) "Fire fighter" means an employee of the Forest Resources

Division of the Department of Natural Resources and Community Development who engages in fire suppression duties.

- (2) "Fire suppression duties" means involvement in on-site fire suppression, participation in Project Fire Team while it is mobilized, Operations Room duty during on-going fires or when required by high readiness plans, mop-up activities to secure fire sites, scouting and detecting forest fires, performance of standby duty, and any other activity that directly contributes to the detection, response to, and control of fires. (1985, c. 757, s. 160(a).)

Editor's Note. — Session Laws 1985, c. 757, s. 160(b) makes this Article effective upon ratification. The act was ratified July 15, 1985.

§ 113-60.33. Standby duty.

(a) Standby duty is time during which a fire fighter is required to remain within 25 miles of his duty station and be available to return to the duty station on call. The Department shall provide each fire fighter on standby duty with an electronic paging device that makes the wearer accessible to his duty station.

(b) Notwithstanding subsection (a) of this section, for at least two out of 14 consecutive days that a fire fighter is on duty, the Department of Natural Resources and Community Development shall permit the fire fighter to be more than 25 miles from his duty station so long as the fire fighter gives the Department of Natural Resources and Community Development a telephone number where he can be reached; each month, the days the fire fighter is permitted to be more than 25 miles from his duty station shall include one full weekend. On the days the fire fighter is permitted to be more than 25 miles from his duty station, the Department of Natural Resources and Community Development may call him only when there is a bona fide emergency. (1985, c. 757, s. 160(a).)

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

ARTICLE 13.

Jurisdiction of Conservation Agencies.

§ 113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained.

(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 556.

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 1933, Chapter 308.

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.

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 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.

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 1925, 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.

Johnston: Session Laws 1975, Chapter 342.

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.

Nash: Session Laws 1961, Chapter 408.

New Hanover: 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.

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.

Randolph: 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.

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 556.

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

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 1979, Chapter 556.

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; 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.

(1979, c. 830, ss. 1, 14; 1979, 2nd Sess., c. 1285, ss. 2, 11; c. 1324, s. 2; 1981, c. 249, s. 2; c. 250, s. 2; 1983, c. 109, s. 2; c. 487, s. 2; 1985, c. 112, s. 1; c. 302, s. 1; c. 689, s. 27.)

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

Editor's Note. — Session Laws 1985, c. 26, effective March 25, 1985, and applicable to Martin County, repealed Session Laws 1979, c. 568.

Session Laws 1985, c. 80, effective May 12, 1985, and applicable to Halifax and Northampton Counties, repealed Session Laws 1959, c. 1304.

Session Laws 1985, c. 421, effective July 1, 1985, and applicable to Pender

County, repealed Session Laws 1977, c. 585, s. 2.

Effect of Amendments. —

The 1985 amendment by c. 112, s. 1, effective September 1, 1985, rewrote the entry for Buncombe County in subsection (e).

The 1985 amendment by c. 302, s. 1, effective October 1, 1985, rewrote the entry for Swain County in subsection (e).

The 1985 amendment by c. 689, s. 27, effective July 11, 1985, deleted "Public-

Local Laws 1919, Chapter 76" from the paragraph relating to Randolph County in subsection (e).

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property.

(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. When live fish are returned to public fishing bottoms or public waters, the inspector or protector shall state on the citation the quantity returned.

(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. Within 20 days of the final court adjudication of a citation, the Department or the Wildlife Resources Commission shall notify any acquitted defendant or established owner of its duly established procedures whereby reimbursement may be sought for live fish seized summarily under subsection (d) that is not available for return. Any action or proceeding to recover compensation must be begun within 30 days after receipt of the notice of applicable procedures. After the expiration of this period of limitation, no right or action or claim for compensation shall be asserted.

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.

(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 for public health reasons or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(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; 1983 (Reg. Sess., 1984), c. 1083, ss. 1-3.)

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

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective

October 1, 1984, added the second sentence of subsection (b), added the last three sentences of subsection (e), and inserted "for public health reasons" in the last sentence of subsection (g).

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ 113-152. Licensing of vessels; fees.

(c) Licenses are issued annually upon a calendar-year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

- (1) Vessels, without motors, regardless of length when used in connection with or other licensed vessels, no license required.
- (2) Vessels with or without motors not over 18 feet in length, one dollar (\$1.00) per foot.
- (3) Vessels with or without motors over 18 feet but not over 38 feet in length, one dollar and fifty cents (\$1.50) per foot.
- (4) Vessels with or without motors over 38 feet in length, three dollars (\$3.00) per foot.
- (4a) Vessels owned by persons who are not residents of North Carolina, two hundred dollars (\$200.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater, in addition to the fee requirement otherwise applicable under this subsection or subsection (d).

- (5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer.

(1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2; 1967, c. 444, ss. 1, 2; 1969, c. 1243; 1973, c. 1262, s. 28; 1977, c. 754; c. 999, ss. 1, 2; 1983, c. 570, ss. 2-7, 16, 22; 1985, c. 365, s. 1.)

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

Effect of Amendments. —

The 1985 amendment, effective June 10, 1985, inserted "or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater" in subdivision (c)(4a).

§ 113-153. Vessels fishing beyond territorial waters.

Persons aboard vessels not having their primary situs in North Carolina which are carrying a cargo of fish taken outside the waters of North Carolina may land and sell their catch in North Carolina by complying with the licensing provisions of G.S. 113-152 with respect to the vessel in question. The Marine Fisheries Commission may by regulation modify the licensing procedure set out in G.S. 113-152 in order to devise an efficient and convenient procedure for licensing out-of-state vessels after landing in order to permit sale of cargo. Provided, that persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land and sell their catch, taken outside such jurisdiction, may land and sell their catch in North Carolina without complying with this section if such persons are in possession of a valid license from their state of residence. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1983, c. 570, s. 14; 1985, c. 365, s. 2.)

Effect of Amendments. —

The 1985 amendment, effective June 10, 1985, added "if such persons are in

possession of a valid license from their state of residence" at the end of the last sentence.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-185. Fishing near ocean piers; trash or scrap fishing.

(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with G.S. 113-156.1. The prohibition shall be effective when:

- (1) Buoys and beach markers, placed at the owner's expense in accordance with the rules adopted by the Department, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and
- (2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier.

(b) It is unlawful to engage in any fishing operations known as trash fishing or scrap fishing. "Trash fishing" or "scrap fishing" consists of taking the young of edible fish before they are of sufficient size to be of value as individual food fish:

- (1) For commercial disposition as bait; or
- (2) For sale to any dehydrating or nonfood processing plant; or
- (3) For sale or commercial disposition in any manner.

The Marine Fisheries Commission may by regulation authorize the disposition of the young of edible fish taken in connection with the legitimate commercial fishing operations, provided that the quantity of such fish that may be disposed of is sufficiently limited, or the taking and disposition is otherwise so regulated, as to discourage any practice of trash or scrap fishing for its own sake. (1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86; 1985, c. 452, ss. 1-4.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, rewrote subsection (a), deleted "intentionally" preceding "taking the young" in the second sentence of the introductory language of subsection (b), deleted

"other than for human consumption" at the end of subdivision (b)(3), and deleted "incidentally and unavoidably" preceding "in connection with legitimate commercial fishing operations" in the last paragraph of subsection (b).

ARTICLE 16.

Cultivation of Shellfish.

§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

(b) The Marine Fisheries Commission may delete any part of an area proposed for lease or may condition a lease to protect the public interest with respect to the factors enumerated in subsection (a) of this section. The Marine Fisheries Commission may not grant a new lease in an area heavily used for recreational purposes.

(f) Within a reasonable time after receipt of an application that complies with subsection (d), the Secretary shall notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Secretary recommends approval or a modification to which the applicant agrees, the Secretary shall conduct a public hearing in the county where the proposed leasehold lies. The Secretary must publish at least two notices of the intention to lease in a newspaper of general circulation in the county in which the proposed leasehold lies. The first publication must precede the public hearing by more than 20 days; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date, hour and place of the hearing. The Secretary's recommendation of disapproval shall become the final agency decision of the application unless the applicant requests in writing within 20 days of notice of such action an administrative hearing before the Marine Fisheries Commission.

(g) Protests to the granting of a proposed lease shall be made either in writing under oath prior to the public hearing held by the Secretary or by testimony under oath during the public hearing. After consideration of the protests and any additional investigations he orders to evaluate the protests, the Secretary shall send to the applicant and protesting parties his final recommendation on the lease application. In the event the Secretary's final recommendation is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the Secretary's final recommendation can be presented to the Marine Fisheries Commission. In the event the Secretary's final recommendation is inconsistent with a protest, the person filing the protest may request in writing within 20 days of notice of such action an administrative hearing before the Marine Fisheries Commission. The Secretary's final recommendation of disapproval shall become the final agency decision of the application unless the applicant requests in writing within 20 days of notice of such action an administrative hearing before the Marine Fisheries Commission.

(h) The Secretary shall present all lease applications recommended for approval to the Marine Fisheries Commission for final determination. In addition to his final recommendation, the Secretary shall present the official record of the application as developed pursuant to the requirements of this action. The applicants and persons who protested the application shall be given an opportunity to present oral and written arguments based on the official record. Unless the Marine Fisheries Commission, in its discretion, refers the matter for an administrative hearing, the Marine Fisheries Commission shall determine all lease applications presented by the Secretary during the public meetings when the matter is presented. The Marine Fisheries Commission, in its discretion, may lease or decline to lease public bottoms in accordance with its duty to conserve the marine and estuarine resources of the State.

More than 20 days prior to an administrative hearing conducted pursuant to this section, the Secretary must publish notice of the hearing in a newspaper of general circulation in the county where the proposed leasehold lies. The hearing shall be conducted in the county where the proposed leasehold lies. Protests to the granting of the proposed lease may be made during the administrative hearing by parties to the hearing, intervening parties, and witnesses for parties. When administrative hearings have been conducted pursuant to this section, the Marine Fisheries Commission shall determine the lease applications during the public meeting when the proposal for decision is presented by the hearing officer(s).

(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years effective from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of fifty dollars (\$50.00). The rental for initial leases is one dollar (\$1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after said date, the rental is five dollars (\$5.00) per acre per year. Rental must be paid annually in advance prior to the first day

of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C.S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1; 1971, c. 447; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; 1983, c. 601, ss. 1-3; c. 621, ss. 4-16; 1985, c. 275, ss. 1-3.)

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

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, added the second sentence of subsection (b), rewrote subsections (f),

(g), and (h), and rewrote the third sentence of subsection (j), which formerly read "Before a renewal lease is issued by the Department, the applicant for a renewal lease must pay a lease renewal fee of fifty dollars (\$50.00)."

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

(a1) If a claim is based on an oyster or other shellfish grant or a perpetual franchise for shellfish cultivation, the Marine Fisheries Commission, upon the recommendation of the Secretary, may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department of Natural Resources and Community Development may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department of Natural Resources and Community Development may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department of Natural Resources and Community Development may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department of Natural Resource and Community Development in such actions may be represented by the Attorney General. In determining the availability of funds to the Department of Natural Resources and Community Development to underwrite the costs of litigation or make condemnation payments, the use which the Department of Natural Resources and

Community Development proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after December 31, 1993.

(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by December 31, 1990. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:

- (1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;
- (2) The cost of resolving these claims;
- (3) The number of unresolved claims; and
- (4) Payments made to acquire claims by condemnation. (1965, c. 957, s. 2; 1969, c. 44, s. 69; c. 541, s. 11; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1985, c. 279; c. 762.)

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

Effect of Amendments. — The 1985 amendment by c. 279, effective May 30, 1985, added subsection (a1).

The 1985 amendment by c. 762, effective July 15, 1985, substituted "trier of fact" for "court" in the third sentence of subsection (d), rewrote subsection (e) and added subsection (f).

ARTICLE 20.

*Miscellaneous Regulatory Provisions.***§ 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(b1)(5), 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; 1985, c. 509, s. 7.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, substituted "G.S. 15A-1343(b1)(5)" for "G.S.

15A-1343(b)(16b)" near the beginning of the first sentence.

ARTICLE 21.

*Licenses and Permits Issued by the Wildlife Resources Commission.***§ 113-270.1. License agents.**

(b) License agents may deduct from the amount collected for each license a fee of six percent (6%).

(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, 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). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.

(1961, c. 352, ss. 4, 9; 1979, c. 830, s. 1; 1985, c. 791, s. 34.)

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

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, rewrote subsection (b), deleted "pay pen-

alties up to ten percent (10%) upon receipts as to which there is serious delay in remittance" preceding "and pay a penalty of five percent" in the second sentence of subsection (c) and added the last sentence of subsection (c).

§ 113-273. Dealer licenses.

(i) **Furbearer Propagation License.** — No person may engage in propagation in captivity or possess any species of furbearers for propagation for the purpose of selling the animals or their pelts for use as fur without first procuring a license under this subsection. The furbearer propagation license is issued by the Wildlife Resources Commission upon payment of a fee of twenty-five dollars (\$25.00). It authorizes the propagation or sale of the pelts or carcasses of the species of furbearing animals named therein, including bobcats, opossums and raccoons, or red and silver foxes (*Vulpes vulpes*), for use as fur. The Wildlife Resources Commission may by regulation prescribe the activities covered by the license, the manner of keeping and raising the animals and the manner of killing them prior to sale, in accordance with overall objectives of conservation of wildlife resources and humane treatment of wild animals raised in captivity. The Wildlife Resources Commission may require tagging of the pelts or carcasses of the animals prior to sale in accordance with the provisions of G.S. 113-276.1(5) and G.S. 113-291.4(g). It is unlawful for any person licensed under this subsection to sell any pelt or carcass of any furbearing animal or fox to any other person who is not lawfully authorized to buy and possess the same, or to sell or deliver a live specimen of any such animal to any person who is not authorized to buy or receive and to hold the animal in captivity.

(j) [Reserved.]

(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, cc. 386, 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; 1981, c. 620, ss. 4-6; 1983, c. 140, s. 9; 1985, c. 476, s. 1.)

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

Effect of Amendments. — The 1985 amendment, effective January 1, 1986, added subsection (i).

ARTICLE 22.

Regulation of Wildlife.

§ 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, except that rifles may not be used in taking wild turkeys.
- (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, and rabbits may be box-trapped in accordance with regulations of the Wildlife Resources Commission. 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 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. No bear or wild boar may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait. 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 of this Subchapter. Any person who unlaw-

fully takes bear or wild boar with the use or aid of any type of bait is punishable as provided by G.S. 113-294(c).

(C.S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, cc. 75, 140; 1971, c. 439, ss. 1-3; c. 899, s. 1; 1973, c. 1096; c. 1262, s. 18; 1975, c. 669; 1977, c. 493; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, ss. 4-6; 1983, c. 137, ss. 1, 2; c. 492; 1985, c. 360; c. 554, ss. 1, 2.)

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

Effect of Amendments. —

The 1985 amendment by c. 360, effective July 1, 1985, added "except that rifles may not be used in taking wild turkeys" at the end of subdivision (a) (1).

The 1985 amendment by c. 554, ss. 1 and 2, effective October 1, 1985, inserted the third sentence of subdivision (b)(2), added "of this Subchapter" at the end of the fourth sentence of subdivision (b)(2) and added the last sentence of that subdivision.

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

(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. 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 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.

(1979, c. 830, s. 1; 1981 (Reg. Sess., 1982), c. 1203, ss. 1-3; 1985, c. 476, s. 2.)

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

Effect of Amendments. —

The 1985 amendment, effective January 1, 1986, deleted the second sentence of subsection (g), which read "These con-

trols 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."

§ 113-294. Specific violations.

(d) Any person who unlawfully takes, possesses, or transports any 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.

(I) Any person who unlawfully takes, possesses, transports, sells or buys any bald eagle or golden eagle, alive or dead, or any part, nest or egg of a bald eagle or golden eagle 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 more than one thousand dollars (\$1,000), or imprisonment of not more than one year, or both. (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^{1/2}; 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; 1985, c. 306; c. 554, s. 3.)

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

Effect of Amendments. — The 1985 amendment by c. 306, effective June 3, 1985, deleted "antlerless" preceding

"deer" in the first sentence of subsection (d).

The 1985 amendment by c. 554, s. 3, effective October 1, 1985, added subsection (I).

ARTICLE 23C.

North Carolina Seafood Industrial Park Authority.

§ 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 General Assembly in the Current Operations Appropriations Act. 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; 1983, c. 717, s. 24; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984),
c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amend-

ment, effective July 1, 1985, substituted
reference to the Current Operations Ap-
propriations Act for reference to the
Budget Appropriations Act in this sec-
tion.

Chapter 113A.

Pollution Control and Environment.

Article 3.

Natural and Scenic Rivers System.

Sec.

- 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.
- 113A-35.2. Additional components.
- 113A-36. Administrative agency; federal grants; additions to the system; regulations.
- 113A-44. Restrictions on project works on natural or scenic river.
- 113A-45 to 113A-49. [Reserved.]

Article 4.

Sedimentation Pollution Control Act of 1973.

- 113A-54. Powers and duties of the Commission.
- 113A-57. Mandatory standards for land-disturbing activity.

Article 7.

Coastal Area Management.

Part 4. Permit Letting and Enforcement.

- 113A-119. Permit applications generally.

Article 8.

North Carolina Land Conservancy Corporation.

- 113A-135 to 113A-149. [Repealed.]

Article 9A.

Nature Preserves Act.

- 113A-164.1. Short title.

Sec.

- 113A-164.2. Declaration of policy and purpose.
- 113A-164.3. Definitions.
- 113A-164.4. Powers and duties of the Secretary.
- 113A-164.5. Registration of natural areas.
- 113A-164.6. Dedication of nature preserves.
- 113A-164.7. Nature preserves held in trust.
- 113A-164.8. Dedication of state-owned lands to nature preserves; procedures.
- 113A-164.9. Dedication of preserves by local governmental units.
- 113A-164.10. Acquisition of land by State.
- 113A-164.11. Assessment of land subject to permanent dedication agreement.

Article 12.

Primary Forest Product Assessment Act.

- 113A-193. Duties of Secretaries.

Article 14.

Mountain Ridge Protection.

- 113A-206. Definitions.
- 113A-208. Regulation of mountain ridge construction by counties and cities.
- 113A-212. Assistance to counties and cities under ridge law.

ARTICLE 1.

Environmental Policy Act.

§ 113A-1. Title.

Cross References. — For provision exempting the issuance of permits for sanitary landfills operated by local governments from the environmental impact statements required by this Article, see § 130A-294(a)(4).

Legal Periodicals. — For survey of

1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

For article discussing a practical interpretation of North Carolina's comprehensive plan requirement for zoning regulations, see 7 Campbell L. Rev. 1 (1984).

ARTICLE 3.

Natural and Scenic Rivers System.

§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.

That segment of the south fork of the New River extending from its confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany Counties to its confluence with the north fork of the New River and the main fork of the New River in Ashe and Alleghany Counties downstream to the Virginia State line shall be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers System.

The Department of Natural Resources and Community Development shall prepare a management plan for said river section. This management plan shall recognize and provide for the protection of the existing undeveloped scenic and pastoral features of the river. Furthermore, it shall specifically provide for continued use of the lands adjacent to the river for normal agricultural activities, including, but not limited to, cultivation of crops, raising of cattle, growing of trees and other practices necessary to such agricultural pursuits.

For purposes of implementing this section and the management plan, the Department of Natural Resources and Community Development is empowered to acquire in fee simple not more than 700 acres, the computation of which shall not include lands received by donation, and to acquire easements, to provide for protection of scenic values as described in G.S. 113A-38 and to provide for public access, in as many as 1,500 acres. Easements obtained for the purpose of implementing this section and the management plan shall not abridge the water rights being exercised on May 26, 1975.

Should the Governor seek inclusion of the said river segment in the National System of Wild and Scenic Rivers by action of the Secretary of Interior, such inclusion shall be at no cost to the federal government, as prescribed in the National Wild and Scenic Rivers Act, and therefore shall be under the terms described in this section of the North Carolina Wild and Scenic Rivers Act and in the management plan developed pursuant thereto. (1973, c. 879; 1975, c. 404; 1977, c. 555; c. 771, s. 4; 1985, c. 129, s. 3.)

Effect of Amendments. — The 1985 amendment, effective April 26, 1985, substituted "700 acres" for "550 acres" in the first sentence of the third paragraph.

§ 113A-35.2. Additional components.

That segment of the Linville River beginning at the State Highway 183 bridge over the Linville River and extending approximately 13 miles downstream to the boundary between the United States Forest Service lands and lands of Duke Power Company (latitude 35° 50' 20") shall be a scenic river area and shall be included in the North Carolina Natural and Scenic River System.

That segment of the Horsepasture River in Transylvania County extending downstream from Bohaynee Road (N.C. 281) to Lake Jocassee shall be a natural river and shall be included in the North Carolina Natural and Scenic Rivers System. (1975, c. 698; 1985, c. 344, s. 1.)

Editor's Note. — Session Laws 1985, c. 344, s. 2 provides: "The Department of Natural Resources and Community Development shall, by January 1, 1986, prepare a management plan for the Horsepasture River section. This plan shall recognize and provide for protection of the existing undeveloped scenic and recreational features of the river and its gorge so as to preserve its outstandingly scenic character in perpetuity. Further, this management plan and the river corridor selected in it shall satisfy Federal requirements for the National Wild and Scenic Rivers System set forth in 16 U.S.C. Sections 1271 and

1273 (a)(ii) and (b) as amended and implementing regulations published in the Federal Register.

"The General Assembly requests the Governor to seek inclusion of the Horsepasture River section in the National System of Wild and Scenic Rivers by action of the Secretary of the Interior. Such inclusion shall be at no cost to the Federal government, as prescribed in the National Wild and Scenic Rivers Act."

Effect of Amendments. — The 1985 amendment, effective June 7, 1985, added the second paragraph.

§ 113A-36. Administrative agency; federal grants; additions to the system; regulations.

(c1) Upon receipt of a request in the form of a resolution from the commissioners of the county or counties in which a river segment is located and upon studying the segment and determining that it meets the criteria set forth in G.S. 113A-35, the Secretary may designate the segment a potential component of the natural and scenic rivers system. The designation as a potential component shall be transmitted to the Governor and all appropriate State agencies. Any segment so designated is subject to the provisions of this Article applicable to designated rivers, except for acquisition by condemnation or otherwise, and to any regulations adopted pursuant to this Article. The Secretary shall make a full report and, if appropriate, a proposal for an addition to the natural and scenic rivers system to the General Assembly within 90 days after the convening of the next session following issuance of the designation, and the General Assembly shall determine whether to designate the segment as a component of the natural and scenic rivers system. If the next session of the General Assembly fails to take affirmative action on the designation, the designation as a potential component shall expire.

(1971, c. 1167, s. 2; 1973, c. 911; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1985, c. 129, s. 1.)

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

Effect of Amendments. — The 1985 amendment, effective April 26, 1985, added subsection (c1).

§ 113A-44. Restrictions on project works on natural or scenic river.

The State Utilities Commission may not permit the construction of any dam, water conduit, reservoir, powerhouse transmission line, or any other project works on or directly affecting any river that is designated as a component or potential component of the State Natural and Scenic Rivers System. No department or agency of the State may assist by loan, grant, license, permit, or otherwise in the construction of any water resources project that would have a direct and adverse effect on any river that is designated as a component or potential component of the State Natural and Scenic Rivers System. This section shall not, however, preclude licensing of or assistance to a development below or above a designated or potential component. No department or agency of the State may recommend authorization of any water resources project that would have a direct and adverse effect on any river that is designated as a component or potential component of the State Natural and Scenic Rivers System, or request appropriations to begin construction of any such project, regardless of when authorized, without advising the Secretary in writing of its intention to do so at least 60 days in advance. Such department or agency making such recommendation or request shall submit a written impact statement to the General Assembly to accompany the recommendation or request specifically describing how construction of the project would be in conflict with the purposes of this act and how it would affect the component or potential component. (1985, c. 129, s. 2.)

Editor's Note. — Session Laws 1985, c. 129, s. 4, makes this section effective on ratification. The act was ratified April 26, 1985.

§§ 113A-45 to 113A-49: Reserved for future codification purposes.

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-50. Short title.

CASE NOTES

Cited in State ex rel. Grimsley v. Buchanan, 64 N.C. App. 367, 307 S.E.2d 385 (1983); State ex rel. Grimsley v. West Lake Dev., Inc., — N.C. App. —, 323 S.E.2d 448 (1984).

§ 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.

(d) In implementing the erosion and sedimentation control program, the Commission is authorized and directed to:

- (1) Assist and encourage local governments in developing erosion and sediment control programs and as part of such assistance to develop a model local erosion control ordinance, and approve, approve as modified, or disapprove local plans submitted to it pursuant to G.S. 113A-60;
- (2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time review such programs for compliance with regulations issued by the Commission and for adequate enforcement;
- (3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans;
- (4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities. As to those activities requiring prior plan approval, the Commission must either approve or disapprove the plan within 30 days of receipt. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Commission must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved.

If, following commencement of a land-disturbing activity pursuant to an approved plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require such revisions as are necessary to comply with this act. The Commission must approve or deny the revised plan within 15 days of receipt, or it is deemed to be approved.

(f) All rules and regulations of the Commission promulgated pursuant to this Article shall be incorporated either in the Secretary's official regulations or his rules of procedure. All such rules and regulations shall upon adoption be filed with the Attorney General as required by Chapter 150A of the General Statutes, and copies thereof shall be filed with the several clerks of court of the counties of the State. Copies shall at all times be kept at the office of the Secretary in sufficient numbers to satisfy all reasonable requests therefor. (1973, c. 392, s. 5; c. 1331, s. 3; c. 1417, s. 6; 1975, 2nd Sess., c. 983, s. 74; 1977, c. 464, s. 35; 1979, c. 922, s. 2; 1983 (Reg. Sess., 1984), c. 1014, ss. 1, 2.)

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

Editor's Note. — Subsection (b) of this section is set out above at the direction of the Revisor of Statutes to correct an erroneous version of (b) in the Replacement Volume.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B. Article 2 of Chapter 150A, referred to in this section, has been recodified as Article 2 of Chapter 150B.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective

June 28, 1984, deleted "and to require at its discretion, submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of said activities" at the end of subdivision (d)(2), substituted a semicolon for a period at the end of subdivision (d)(3), added subdivision (d)(4), and deleted a former last sentence of subsection (f), which read "Except for those activities enumerated in G.S. 113A-56 over which the Commission has exclusive jurisdiction, the Commission shall in no event require approval prior to the commencement of land-disturbing activity."

CASE NOTES

Stated in State ex rel. Grimsley v. Buchanan, 64 N.C. App. 367, 307 S.E.2d 385 (1983).

§ 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:

- (4) No person shall initiate any land-disturbing activity if more than one contiguous acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction. (1973, c. 392, s. 8; c. 1417, s. 5; 1975, c. 847, s. 2; 1979, c. 564; 1983 (Reg. Sess., 1984), c. 1014, s. 3.)

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

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective June 28, 1984, added subdivision (4).

§ 113A-64. Penalties.

CASE NOTES

Stated in State ex rel. Grimsley v. Buchanan, 64 N.C. App. 367, 307 S.E.2d 385 (1983).

§ 113A-66. Civil relief.

CASE NOTES

Stated in State ex rel. Grimsley v. Buchanan, 64 N.C. App. 367, 307 S.E.2d 385 (1983).

ARTICLE 7.

Coastal Area Management.

Part 2. Planning Processes.

§ 113A-111. Effect of land-use plan.

Legal Periodicals. — For article discussing a practical interpretation of North Carolina's comprehensive plan re-

quirement for zoning regulations, see 7 Campbell L. Rev. 1 (1984).

Part 4. Permit Letting and Enforcement.

§ 113A-119. Permit applications generally.

(b) Upon receipt of an application, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) by posting or causing to be posted a notice at the location of the proposed development stating that an application for development has been made, where the application may be inspected, and the time period for comments; and (iii) by publishing notice of the application at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not to exceed 15 days from the date of the newspaper publication of the notice. Public notice under this subsection is mandatory.

(1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1983, c. 307; 1985, c. 372.)

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

Effect of Amendments. —

The 1985 amendment, effective June

11, 1985, rewrote clause (ii) of the first sentence of subsection (b), which read "(ii) by posting or causing to be posted a copy of the application at the location of the proposed development; and."

ARTICLE 8.

North Carolina Land Conservancy Corporation.

§§ 113A-135 to 113A-149: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 4, effective June 27, 1984.

ARTICLE 9.

Land Policy Act.

§ 113A-156. State land classification system.

Legal Periodicals. — For article discussing a practical interpretation of North Carolina's comprehensive plan requirement for zoning regulations, see 7 Campbell L. Rev. 1 (1984).

ARTICLE 9A.

Nature Preserves Act.

§ 113A-164.1. Short title.

This Article shall be known as the Nature Preserves Act. (1985, c. 216, s. 1.)

Editor's Note. — Session Laws 1985, c. 216, s. 3 makes this Article effective on ratification. The act was ratified May 22, 1985.

§ 113A-164.2. Declaration of policy and purpose.

(a) The continued population growth and land development in North Carolina have made it necessary and desirable that areas of natural significance be identified and preserved before they are destroyed. These natural areas are irreplaceable as laboratories for scientific research, as reservoirs of natural materials for uses that may not now be known, as habitats for plant and animal species and biotic communities, as living museums where people may observe natural biotic and environmental systems and the interdependence of all forms of life, and as reminders of the vital dependence of the health of the human community on the health of the other natural communities.

(b) It is important to the people of North Carolina that they retain the opportunity to maintain contact with these natural communities and environmental systems of the earth and to benefit from the scientific, aesthetic, cultural, and spiritual values they possess. The purpose of this Article is to establish and maintain a State Registry of Natural Heritage Areas and to prescribe methods by which nature preserves may be dedicated for the benefit of present and future citizens of the State. (1985, c. 216, s. 1.)

§ 113A-164.3. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Articles of dedication" means the writing by which any estate, interest, or right in a natural area is formally dedicated as a nature preserve as authorized in G.S. 113A-164.6.
- (2) "Dedicate" means to transfer to the State an estate, interest, or right in a natural area in any manner authorized in G.S. 113A-164.6.
- (3) "Natural area" means an area of land, water, or both land and water, whether publicly or privately owned, that (i) retains or has reestablished its natural character, (ii) provides habitat for rare or endangered species of plants or animals, (iii) or has biotic, geological, scenic, or paleontological features of scientific or educational value.
- (4) "Nature preserve" means a natural area that has been dedicated pursuant to G.S. 113A-164.6.
- (5) "Owner" means any individual, corporation, partnership, trust, or association, and all governmental units except the State, its departments, agencies or institutions.
- (6) "Registration" means an agreement between the Secretary and the owner of a natural area to protect and manage the natural area for its specified natural heritage resource values.
- (7) "Secretary" means the Secretary of the Department of Natural Resources and Community Development. (1985, c. 216, s. 1.)

§ 113A-164.4. Powers and duties of the Secretary.

The Secretary shall:

- (1) Establish by regulation the criteria for selection, registration, and dedication of natural areas and nature preserves.
- (2) Cooperate or contract with any federal, State, or local government agency, private conservation organization, or person in carrying out the purposes of this Article.
- (3) Maintain a Natural Heritage Program to provide assistance in the selection and nomination for registration or dedication of natural areas. The Program shall include classification of natural heritage resources, an inventory of their locations, and a data bank for that information. The Program shall cooperate with the Department of Agriculture in the selection and nomination of areas that contain habitats for endangered and rare plant species, and shall cooperate with the Wildlife Resources Commission in the selection and nomination of areas that contain habitats for endangered and rare animal species. Information from the natural heritage data bank may be made available to public agencies and private persons for environmental assessment and land management purposes. Use of the inventory data for any purpose inconsistent with the Natural Heritage Program may not be authorized. The Program shall include other functions as may be assigned for registration, dedication, and protection of natural areas and nature preserves.

- (4) Prepare a Natural Heritage Plan that shall govern the Natural Heritage Program in the creation of a system of registered and dedicated natural areas.
- (5) Publish and disseminate information pertaining to natural areas and nature preserves within the State.
- (6) Appoint advisory committees composed of representatives of federal, State, and local governmental agencies, scientific and academic institutions, conservation organizations, and private business, to advise him on the identification, selection, registration, dedication, and protection of natural areas and nature preserves.
- (7) Submit to the Governor and the General Assembly a biennial report on or before February 15, 1987, and on or before February 15 of subsequent odd-numbered years describing the activities of the past biennium and plans for the coming biennium, and detailing specific recommendations for action that the Secretary deems necessary for the improvement of the Program. (1985, c. 216, s. 1.)

§ 113A-164.5. Registration of natural areas.

(a) The Secretary shall maintain a State Registry of voluntarily protected natural areas to be called the North Carolina Registry of Natural Heritage Areas. Registration of natural areas shall be accomplished through voluntary agreement between the owner of the natural area and the Secretary. State-owned lands may be registered by agreement with the agency to which the land is allocated. Registration agreements may be terminated by either party at any time, and termination removes the area from the Registry.

(b) A natural area shall be registered when an agreement to protect and manage the natural area for its specified natural heritage resource value has been signed by the owner and the Secretary. The owner of a registered natural area shall be given a certificate signifying the inclusion of the area in the Registry. (1985, c. 216, s. 1.)

§ 113A-164.6. Dedication of nature preserves.

(a) The State may accept the dedication of nature preserves on lands deemed by the Secretary to qualify as outstanding natural areas. Nature preserves may be dedicated by voluntary act of the owner. The owner of a qualified natural area may transfer fee simple title or other interest in land to the State. Nature preserves may be acquired by gift, grant, or purchase. Dedication of a preserve shall become effective only upon acceptance of the articles of dedication by the State. Articles of dedication shall be recorded in the office of the register of deeds in the county or counties in which the natural area is located.

(b) Articles of dedication may:

- (1) Contain restrictions and other provisions relating to management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this Article;

- (2) Define, consistently with the purposes of this Article, the respective rights and duties of the owner and of the State and provide procedures to be followed in case of violation of the restrictions;
- (3) Recognize and create reversionary rights, transfers upon conditions or with limitations, and gifts over; and
- (4) Vary in provisions from one nature preserve to another in accordance with differences in the characteristics and conditions of the several areas.

(c) Subject to the approval of the Governor and Council of State, the State may enter into amendments of any articles of dedication upon finding that the amendment will not permit an impairment, disturbance, use, or development of the area inconsistent with the purposes of this Article. If the fee simple estate in the nature preserve is not held by the State under this Article, no amendment may be made without the written consent of the owner of the other interests therein. (1985, c. 216, s. 1.)

§ 113A-164.7. Nature preserves held in trust.

Lands dedicated for nature preserves pursuant to this Article are held in trust by the State for those uses and purposes expressed in this Article for the benefit of the people of North Carolina. These lands shall be managed and protected according to regulations adopted by the Secretary. Lands dedicated as a nature preserve pursuant to G.S. 113A-164.6 may not be used for any purpose inconsistent with the provisions of this Article, or disposed of, by the State without a finding by the Governor and Council of State that the other use or disposition is in the best interest of the State. (1985, c. 216, s. 1.)

§ 113A-164.8. Dedication of state-owned lands to nature preserves; procedures.

Subject to the approval of the Governor and Council of State, state-owned lands may be dedicated as a nature preserve. State-owned lands shall be dedicated by allocation pursuant to the provisions of G.S. 143-341(4)g. Lands dedicated pursuant to this section may be removed from dedication upon the approval of the Governor and Council of State. (1985, c. 216, s. 1.)

§ 113A-164.9. Dedication of preserves by local governmental units.

All local units of government may dedicate lands as nature preserves by transfer of fee simple title or other interest in land to the State. (1985, c. 216, s. 1.)

§ 113A-164.10. Acquisition of land by State.

All acquisitions or dispositions of an interest in land by the State pursuant to this Article shall be subject to the provisions of Chapter 146 of the General Statutes. (1985, c. 216, s. 1.)

§ 113A-164.11. Assessment of land subject to permanent dedication agreement.

For purposes of taxation, privately owned land subject to a nature preserve dedication agreement shall be assessed on the basis of the true value of the land less any reduction in value caused by the agreement. (1985, c. 216, s. 1.)

ARTICLE 12.

Primary Forest Product Assessment Act.

§ 113A-193. Duties of Secretaries.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year. (1977, c. 573, s. 5; c. 771, s. 4; 1983, c. 761, s. 120; 1985, c. 526.)

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

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, substituted "The Secretary of Revenue shall be reimbursed" for "The Secretary, Department of Revenue shall

be reimbursed" at the beginning of the first sentence of subsection (c) and substituted "five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year" for "fifty thousand dollars (\$50,000), annually" at the end of the last sentence of subsection (c).

ARTICLE 14.

Mountain Ridge Protection.

§ 113A-205. Short title.

Legal Periodicals. — For article discussing the legislative history of the North Carolina Mountain Ridge Protection Act and analyzing its major provisions, see 63 N.C.L. Rev. 183 (1984).

For note on the regulatory impact of the North Carolina's ridge law, see 63 N.C.L. Rev. 197 (1984).

§ 113A-206. Definitions.

Within the meaning of this Article:

- (6) "Protected mountain ridges" are all mountain ridges whose elevation is 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor; provided, however, that a county, or a city with a population of fifty thousand (50,000) or more, may elect to eliminate the requirement for an elevation of 3,000 feet, and such election shall apply both to an ordinance adopted under G.S. 113A-208 and the prohibition against construction under G.S. 113A-209; provided, further, that such ordinance shall be adopted pursuant to the procedures of G.S. 113A-208.

(1983, c. 676, s. 1; 1985, c. 713, s. 1.)

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

Effect of Amendments. — The 1985

amendment, effective July 11, 1985, inserted "or a city with a population of fifty thousand (50,000) or more" in subdivision (6).

§ 113A-208. Regulation of mountain ridge construction by counties and cities.

(a) Any county or city may adopt, effective not later than January 1, 1984, and may enforce an ordinance that regulates the construction of tall buildings or structures on protected mountain ridges by any person. The ordinance may provide for the issuance of permits to construct tall buildings on protected mountain ridges, the conditioning of such permits, and the denial of permits for such construction. Any ordinance adopted hereunder shall be based upon studies of the mountain ridges within the county, a statement of objectives to be sought by the ordinance, and plans for achieving these objectives. Any such county ordinance shall apply countywide except as otherwise provided in G.S. 160A-360, and any such city ordinance shall apply citywide, to construction of tall buildings on protected mountain ridges within the city or county, as the case may be.

A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

(d) An ordinance adopted under the authority of this section applies to all protected mountain ridges as defined in G.S. 113A-206. A county or city may apply the ordinance to other mountain ridges within its jurisdiction if it finds that this application is reasonably necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-207. Additionally, a city with a population of 50,000 or more may apply the ordinance to other mountain ridges within its extraterritorial planning jurisdiction if it finds that this application is reasonably necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-207.

(1983, c. 676, s. 1; 1985, c. 713, ss. 2, 4.)

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

Effect of Amendments. — The 1985

amendment, effective July 11, 1985, added the last sentence of subsection (a) and the last sentence of subsection (d).

§ 113A-212. Assistance to counties and cities under ridge law.

(b1) By January 1, 1986, a map, drawing, or document tentatively identifying the protected mountain ridge crests of each city with a population of fifty thousand (50,000) or more that has eliminated the requirement for a minimum elevation of 3,000 feet, shall be filed by the Secretary of Natural Resources and Community Development with the board of county commissioners and with the city governing body. By March 1, 1986, the map, drawing, or document identifying the protected mountain ridge crests in the city with a population of fifty thousand (50,000) or more shall be permanently filed by the Secretary with the register of deeds in the county where the land within that city with a population of fifty thousand (50,000) or more lies, and shall be made available for inspection at the Secretary's office in Raleigh. Copies of the maps, drawings, or documents certified by the register of deeds shall be admitted in evidence in all courts and shall have the same force and effect as would the original.

(1983, c. 676, s. 1; 1985, c. 713, s. 3.)

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

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, added subsection (b1).

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 2.

Energy Crisis Administration.

Sec.

113B-21. Creation of Legislative Committee on Energy Crisis Management.

Sec.

113B-22. Procedures for adopting emergency proposals; emergency powers.

113B-23. Administration of plans and procedures.

ARTICLE 2.

Energy Crisis Administration.

§ 113B-21. Creation of Legislative Committee on Energy Crisis Management.

(a) There is hereby created a Legislative Committee on Energy Crisis Management to consist of the Speaker, as chairman, the Speaker pro tempore of the House of Representatives and the President pro tempore and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie.

(1975, c. 877, s. 4; 1977, c. 23, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 135.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, deleted "assistant" preceding "majority leader" near the end of the first sentence of subsection (a).

§ 113B-22. Procedures for adopting emergency proposals; emergency powers.

(b) The Governor shall immediately consult with the Legislative Committee about the emergency proposals. The emergency orders, rules, or regulations shall become effective at a time specified by the Governor, but no earlier than 48 hours after submission to the Legislative Committee, provided that they may take effect at an earlier time if approved by a majority vote of the Council of State after the Council makes a finding that the crisis is of such immediacy as to make delay for legislative review cause for probable harm to the public.

(c) No order, rule, or regulation promulgated under the provisions of this section shall remain in effect for more than 30 days unless the Governor consults with the Legislative Committee. Such consultation is separate and apart from the consultation required by subsection (a) of this section, and may not take place until the order, rule, or regulation has been in effect for at least seven days.

(d) The Governor's orders, rules and regulations, promulgated, subject to consultation with the Legislative Committee, pursuant to this section, may also include, by way of further enumerated exam-

ple rather than limitation, provisions for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities. (1975, c. 877, s. 4; 1983 (Reg. Sess., 1984), c. 1034, ss. 136, 137.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983

(Reg. Sess., 1984) amendment, effective July 1, 1984, rewrote subsections (b) and (c) and substituted "consultation with the Legislative Committee" for "the review of the Legislative Committee" near the beginning of subsection (d).

§ 113B-23. Administration of plans and procedures.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy Policy Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(1975, c. 877, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 138.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983

(Reg. Sess., 1984) amendment, effective July 1, 1984, deleted "and upon the approval of the Legislative Committee" following "Upon the declaration of an energy crisis" near the beginning of subsection (b).

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.

114-1.1. Common-law powers.

114-2.1. Consent judgments.

114-2.2. Attorney General to approve consent judgments.

Sec.

114-2.3. Use of private counsel limited.

114-7. Salary of the Attorney General.

114-8.1. Attorney General interns.

Article 4.

State Bureau of Investigation.

114-15.2. Use of private investigators limited.

ARTICLE 1.

Attorney General.

§ 114-1. Creation of Department of Justice under supervision of Attorney General.

CASE NOTES

Legislative Intent. — The constitutional independence of the executive offices, and their differing functions and duties, create clear potential for conflict between their respective holders. In the event of such conflict, power in the Attorney General to resolve, without their consent, controversies involving agencies or departments under the supervision of the Governor, could be abused by

exercise in a manner effectively derogative of the Governor's constitutional duties to exercise executive power and to supervise the official conduct of all executive officers. The General Assembly, in the enactment of § 114-2(2), did not intend to create such potential. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

§ 114-1.1. Common-law powers.

The General Assembly reaffirms that the Attorney General has had and continues to be vested with those powers of the Attorney General that existed at the common law, that are not repugnant to or inconsistent with the Constitution or laws of North Carolina. (1985, c. 479, s. 137.)

Editor's Note. — Session Laws 1985, c. 479, s. 137(b) makes this section effective upon ratification. The act was ratified June 27, 1985.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

§ 114-2. Duties.

CASE NOTES

Legislative Intent. — The constitutional independence of the executive offices, and their differing functions and duties, create clear potential for conflict between their respective holders. In the event of such conflict, power in the Attorney General to resolve, without their consent, controversies involving agencies or departments under the supervision of the Governor, could be abused by exercise in a manner effectively derogative of the Governor's constitutional duties to exercise executive power and to supervise the official conduct of all executive officers. The General Assembly, in the enactment of subdivision (2) of this section, did not intend to create such potential. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

The Attorney General is bound by the traditional rule governing the attorney-client relationship when representing the departments, agencies, institutions, commissions, bureaus or other organized activities of the State. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

And cannot enter a consent judgment without the consent of a duly authorized department official. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

An agency or department of the State should have the right possessed by other litigants to determine whether its counsel, whether the Attorney General or otherwise, can enter a consent judgment on its behalf. Such a right is also consonant with fulfillment by the respective agencies and departments of the State of their statutorily assigned duties. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

There is nothing in the common-law powers of the Attorney General which grants him authority to enter consent judgments binding the agencies and departments of the State without their consent. North Carolina statutes do not expressly grant such power. The assignment of specific responsibilities and duties to the various agencies and departments would appear to indicate legislative intent to the contrary. Given the constitutional and statutory structure of state government, and the assignment of duties and responsibilities between and among its officers, agencies, and departments, considerations of sound public policy also suggest the contrary rule. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

Applied in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984); *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 323 S.E.2d 294 (1984).

§ 114-2.1. Consent judgments.

In litigation in which the State is interested or is a party, no consent judgment shall be entered into by the State unless and no consent judgment shall be binding on the State except to the extent that the State's entire obligation for the current and for future fiscal years will be satisfied with funds that are available for that purpose for the current fiscal year, including funds that the Council of State agrees to allot from the Contingency and Emergency Fund, provided that for payments of tort claims and workers' compensation claims it shall not be binding on the State except to the extent that the State's entire obligation for the current and for future fiscal years can be satisfied with funds that are available for the current fiscal year, including funds that the Council of State agrees to allot from the Contingency and Emergency Fund. The Director of the Budget shall report to the appropriation committees of the General Assembly concerning all funds made available during the preceding fiscal year from the Contingency and Emergency Fund for the purpose of carrying out consent judgments. (1981 (Reg. Sess., 1982), c. 1282, s. 51; 1983 (Reg. Sess., 1984), c. 1034, s. 95; c. 1116, s. 85.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and c. 1116, s. 115, are severability clauses.

Session Laws 1985, c. 757, s. 166, provides:

"(a) Notwithstanding G.S. 114-2.1, the State may enter into a consent judgment in the case of *Hubert v. Ward*, C-C-80-414M, United States District Court for the Western District of North Carolina, Charlotte Division.

"(b) The consent judgment authorized by subsection (a) of this section is subject to G.S. 114-2.2.

"(c) In the event a consent agreement is reached, funds appropriated in Chapters 479 and 480 of the 1985 Session Laws to eliminate triple bunking and to improve correctional facilities in the south piedmont area may be used to implement that consent judgment, including, with consent of all parties to the litigation and with consent of the court, implementing additional community penalties programs or additional intensive probation programs.

"In the event that no consent agreement is reached, funds appropriated in Chapters 479 and 480 of the 1985 Session Laws to eliminate triple bunking and to improve correctional facilities in the south piedmont area may be used to: (i) eliminate triple bunking through construction of new dormitories; (ii) improve correctional facilities by constructing recreation, vocational, and multipurpose buildings and renovating existing dormitories; and, (iii) improve

staffing, services, and provisions in the South Piedmont Area and at the Montgomery County Unit, including implementing additional community penalties programs or additional intensive probation programs.

"(d) The Office of State Budget and Management and the Department of Correction shall provide quarterly reports on expenditures to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

"(e) The Office of State Budget and Management and the Department of Correction shall submit a report on expenditures and progress in achieving necessary improvements in the South Piedmont Area and at the Montgomery County Unit to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division, by May 1, 1986."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 95, effective September 1, 1984, substituted "will be satisfied" for "can be satisfied" and "available for that purpose for the current fiscal year" for "available for the current fiscal year" in the first sentence and added the proviso at the end of that sentence.

The 1983 (Reg. Sess., 1984) amendment by c. 116, s. 85, effective July 1, 1984, substituted "tort claims and workers' compensation claims" for "tort claims" in the proviso added by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 95.

CASE NOTES

An attorney cannot enter a consent judgment without the consent of his client. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

The Attorney General is bound by the traditional rule governing the attorney-client relationship, and cannot enter a consent judgment without the consent of the entity represented. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

There is nothing in the common-law powers of the Attorney General which grants him authority to enter consent judgments binding the agencies and departments of the State without their consent. North Carolina statutes do not expressly grant such power. The assignment of specific responsibilities and du-

ties to the various agencies and departments would appear to indicate legislative intent to the contrary. Given the constitutional and statutory structure of state government, and the assignment of duties and responsibilities between and among its officers, agencies, and departments, considerations of sound public policy also suggest the contrary rule. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

An agency or department of the State should have the right possessed by other litigants to determine whether its counsel, whether the Attorney General or otherwise, can enter a consent judgment on its behalf. Such a right is also consonant with fulfillment by the respective agencies and departments of the State of their statutorily assigned duties. *Tice v.*

Department of Transp., 67 N.C. App. 48,
312 S.E.2d 241 (1984).

§ 114-2.2. Attorney General to approve consent judgments.

(a) To be effective against the State, a consent judgment entered into by the State, a State department, State agency, State institution, or a State officer who is a party in his official capacity must be signed personally by the Attorney General. This power of approval may not be delegated to a deputy or assistant Attorney General or to any other subordinate.

(b) The provisions of this section are supplemental to G.S. 114-2.1.

(c) Notwithstanding subsection (a) of this section, the Attorney General by rule may delegate to a deputy or assistant Attorney General or to another subordinate the power to sign consent judgments in condemnation or eminent domain actions brought under the provisions of Chapters 40A or 136 of the General Statutes and consent judgments under the provision of Article 31 of Chapter 143 (Tort Claims Act) and Chapter 97 (Workers' Compensation Act) of the General Statutes. (1983 (Reg. Sess., 1984), c. 1034, s. 95; c. 1116, s. 85.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 95(e), makes this section effective September 1, 1984, except that rules issued under subsection (c) of this section may be issued at any time after ratification. The act was ratified June 29, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and c. 1116, s. 115, are severability clauses.

Session Laws 1985, c. 757, s. 166, provides:

"(a) Notwithstanding G.S. 114-2.1, the State may enter into a consent judgment in the case of *Hubert v. Ward*, C-C-80-414M, United States District Court for the Western District of North Carolina, Charlotte Division.

"(b) The consent judgment authorized by subsection (a) of this section is subject to G.S. 114-2.2.

"(c) In the event a consent agreement is reached, funds appropriated in Chapters 479 and 480 of the 1985 Session Laws to eliminate triple bunking and to improve correctional facilities in the south piedmont area may be used to implement that consent judgment, including, with consent of all parties to the litigation and with consent of the court, implementing additional community penalties programs or additional intensive probation programs.

"In the event that no consent agreement is reached, funds appropriated in

Chapters 479 and 480 of the 1985 Session Laws to eliminate triple bunking and to improve correctional facilities in the south piedmont area may be used to: (i) eliminate triple bunking through construction of new dormitories; (ii) improve correctional facilities by constructing recreation, vocational, and multipurpose buildings and renovating existing dormitories; and, (iii) improve staffing, services, and provisions in the South Piedmont Area and at the Montgomery County Unit, including implementing additional community penalties programs or additional intensive probation programs.

"(d) The Office of State Budget and Management and the Department of Correction shall provide quarterly reports on expenditures to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

"(e) The Office of State Budget and Management and the Department of Correction shall submit a report on expenditures and progress in achieving necessary improvements in the South Piedmont Area and at the Montgomery County Unit to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division, by May 1, 1986."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, by c.

1116, s. 85, effective July 1, 1984, added "and consent judgments under the provision of Article 31 of Chapter 143 (Tort

Claims Act) and Chapter 97 (Workers' Compensation Act) of the General Statutes" at the end of subsection (c).

§ 114-2.3. Use of private counsel limited.

Every agency, institution, department, bureau, board, or commission of the State, authorized by law to retain private counsel, shall obtain written permission from the Attorney General prior to employing private counsel. This section does not apply to counties, cities, towns, other municipal corporations or political subdivisions of the State, or any agencies of these municipal corporations or political subdivisions, or to county or city boards of education. (1985, c. 479, s. 135.)

Editor's Note. — Session Laws 1985, c. 479, s. 135(b) makes this section effective upon ratification. The act was ratified June 27, 1985.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

§ 114-7. Salary of the Attorney General.

The salary of the Attorney General shall be set by the General Assembly in the Current Operations Appropriations Act. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3; 1967, c. 1130; c. 1237, s. 3; 1969, c. 1214, s. 3; 1971, c. 912, s. 3; 1973, c. 778, s. 3; 1975, 2nd Sess., c. 983, s. 18; 1977, c. 802, s. 42.14; 1983, c. 761, s. 209; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amend-

ment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

§ 114-8.1. Attorney General interns.

The Attorney General may select interns to work in the Attorney General's Office from institutions of higher education, including the constituent institutions of The University of North Carolina. The Attorney General may adopt policies or rules to provide for the selection, tenure, duties, and compensation of these interns. (1985, c. 479, s. 140.)

Editor's Note. — Session Laws 1985, c. 479, s. 231 makes this section effective July 1, 1985.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

ARTICLE 4.

State Bureau of Investigation.

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

CASE NOTES

For discussion of criminal or civil litigants' rights to pretrial discovery at common law, see *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

Civil discovery is now governed by statute. The Supreme Court of the United States has indicated that rules governing discovery in civil cases are a matter of legislative grace. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

Statutes have now replaced the former equitable rights of discovery and bills of discovery in equity have been abolished. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

Civil litigants enjoy no absolute right to discovery of documents in the hands of others. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

Absent a statute requiring disclosure, police records generally are held confidential. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

Reasons for excluding police and investigative records from the operation of statutory rights of public access: (1) Reports based on criminal investigations are often exempt from disclosure because they are based on hearsay and consist largely of the opinions and conclusions of the investigators; (2) The need for protection of confidentiality of government informants and the protection of investigative techniques used by law enforcement agencies also have been generally accepted as justifying prohibitions on disclosure of police and investigative records; (3) For recognition of the rights of privacy of individuals mentioned or accused of wrongdoing in unverified or unverifiable hearsay statements of others included in such reports.

News & Observer Publishing Co. v. State ex rel. Starling, 312 N.C. 276, 322 S.E.2d 133 (1984).

This section was intended to limit the broad scope of the Public Records Act (§§ 132-1 through 132-9). *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

State Bureau of Investigation records are not public records and access to them is not available under the Public Records Act (§§ 132-1 through 132-9). Instead, access to S.B.I. records is controlled entirely by this section. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

And Such Restriction Not Constitutional Violation. — The restrictions embodied in this section limiting disclosure of State Bureau of Investigation records do not violate any rights guaranteed by the First Amendment to the Constitution of the United States. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

This section grants no new right whatsoever to access to State Bureau of Investigation records. The statute makes it clear that S.B.I. records are not public records, and access to them by parties, other than District Attorneys, may be permitted only upon an order of a court of competent jurisdiction when those parties are otherwise entitled by statute to access. Such access is available only under the statutory procedures for discovery in civil or criminal cases. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

Limited Access to Records by District Attorneys. — The district attorneys who have the constitutional and statutory duty to prosecute criminal cases in this State have a right of access

to S.B.I. records, but only if such records concern persons or investigations in their respective districts. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

State v. Goldberg Disapproved. — To the extent that *State v. Goldberg*, 261 N.C. 181, 134 S.E.2d 334, cert. denied, 377 U.S. 978, 84 S. Ct. 1884, 12 L. Ed. 2d 747 (1964) can be read as implying that trial courts are given unfettered discre-

tion by this section to make State Bureau of Investigation records and evidence public, that opinion is expressly disapproved. The discretion possessed by trial courts in this regard is limited to that necessary to the performance of their duties in applying the statutory procedures for civil and criminal discovery. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

§ 114-15.2. Use of private investigators limited.

No State executive officer, department, agency, institution, commission, bureau, or other organized activity of the State that receives support in whole or in part from the State except for counties, cities, towns, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, or county or city boards of education may employ a private investigator without the consent of the Attorney General. If the Attorney General determines that it is impracticable for the Bureau to conduct the investigation, the Attorney General shall employ a private investigator and shall fix the compensation for his services. The cost of the private investigator shall be paid from funds credited to the entity requesting the investigation or from the Contingency and Emergency Fund. (1985, c. 479, s. 138.)

Editor's Note. — Session Laws 1985, c. 479, s. 231 makes this section effective July 1, 1985.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Chapter 115C.

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115C-47. (For effective date see notes) Powers and duties generally.

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115C-81. (For effective date see notes) Basic Education Program.

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SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Definitions and Preliminary Provisions.

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

A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person of the State less than 21 years old, who has not completed a standard high school course of study. There shall be operated in every local school administrative unit a uniform school term of nine months, without the levy of a State ad valorem tax therefor. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24; 1971, c. 704, s. 1; c. 1231, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 21; 1985, c. 780, s. 1.)

Local Modification. —

(As to Chapter 115C) Durham City Board of Education: 1983 (Reg. Sess., 1984), c. 948; Kannapolis City School Administrative Unit: 1983 (Reg. Sess., 1984), c. 963; Monroe City Board of Education: 1985, c. 41.

Editor's Note. —

Session Laws 1985, c. 780, s. 5 provides that the act shall be administered from funds appropriated to the Department of Public Instruction for fiscal years 1985-86 and 1986-87 and shall not necessitate additional appropriations for those years.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "every person of the State less than 19 years old" for "every person 18 years of age, or over" in the second sentence as it read prior to the 1985 amendment.

The 1985 amendment, effective July 17, 1985, substituted "21 years old" for "19 years old" in the second sentence.

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

ARTICLE 2.

State Board of Education.

§ 115C-10. Appointment of Board.

The State Board of Education shall consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the Governor, subject to confirmation by the General Assembly in joint session. No public school employee paid from State or local funds or his spouse, and no employee of the Department of Public Instruction or his spouse, may serve as an appointive member of the State Board of Education. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts and three shall be appointed as members at large.

Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the sixtieth legislative day of the General Assembly, the names of the persons appointed by him and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments. (1955, c. 1372, art. 1, s. 2; 1971, c. 704, s. 2; 1981, c. 423, s. 1; 1985, c. 479, s. 36.)

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, and applicable only to appointments either for a full term or to fill a vacancy made after July 1, 1985, inserted the present second sentence.

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

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The powers and duties of the State Board of Education are defined as follows:

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

- a. To certify and regulate the grade and salary of teachers and other school employees.
- b. To adopt and supply textbooks.
- c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government.

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

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

- d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
- e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

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

- (18) **Duty to Develop and Implement a Central Payroll System.** — The State Board of Education shall develop and implement a central payroll system for all payments from State or federal funds for employees of local school administrative units as selected by the State Board. By the 1987-88 school year, all State-funded and federally funded employees of local school administrative units shall be paid through this system.

Payments through the central payroll system shall be made by electronic funds transferred to a financial institution in an account designated by the employee; however, the State Board may authorize payment by payroll check to certain classes of temporary employees that the State Board finds it would be administratively more efficient to pay in that manner.

All employees paid through the central payroll system shall be paid monthly on one of two statewide payroll dates established by the State Board. The State Board shall designate which classes of employees shall be paid on each of the two dates. This paragraph may not be construed to authorize payment to any employee for work not yet done.

Each employee shall receive a statement of his pay level and annual salary with the first salary payment of each school year.

Payments made to employees from non-State and non-federal funds, including local supplements, shall be made through the local payroll system unless the local school administrative unit is included in the central payroll system and its local board of education requests in writing that these payments be made through the central payroll system. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a).)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 16(d), provides: "The State Board of Education shall report to the Joint Legislative Commission on Governmental Operations by December 1, 1984, on its progress in developing the centralized payroll system mandated in subsection (a)

of this section. It shall also report any statutory changes it would need to implement the system. The State Board shall make a final implementation report on the system for certified employees by April 1, 1985, to the President of the Senate, the Speaker of the House, the President Pro Tempore of the Senate, the Speaker Pro Tempore of the House, the Majority Leader of the Senate and the Chairmen of the Appropria-

tions Committees of the Senate and the House. The State Board shall make a final implementation report on the System for noncertified employees by April 1, 1986, to the Joint Legislative Commission on Governmental Operations."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 219, provides:

"Notwithstanding the provisions of Section 19.1 of Chapter 1137 of the 1979 Session Laws as amended by Chapter 1053 of the 1981 Session Laws, G.S. 115C-12(9)a., G.S. 126-7, or any other provision of law, no employee or officer of the public school system shall receive an automatic increment, and no State employee or officer shall receive a merit increment during the 1984-85 fiscal year, except as otherwise permitted by this act. This section expires June 30, 1985.

"The General Assembly recognizes that because of budget constraints, automatic increments and annual increments have been frozen since July 1, 1982. If the State is to attract and retain qualified teachers and State employees, it is imperative that automatic increments and annual increments be reinstated as soon as possible. Therefore, the General Assembly requests that the Governor and the Advisory Budget Commission give the reinstatement of the annual increments and merit increments and the addition of the tenth step in the State employees salary plan the highest priority when they prepare a budget for the 1985-87 fiscal biennium."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 and Session Laws 1985, c. 479, s. 230 are severability clauses.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, ss. 55(c)(8) and (c)(9), provide:

"(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Session Laws 1985, c. 479, s. 226, as amended by c. 757, ss. 196 and 197, provides:

"(a) The General Assembly recognizes that automatic and merit salary increments for State, community college and public school employees have been fro-

zen since July 1, 1982. Although the General Assembly reaffirms its belief in a merit pay system, in an attempt to minimize the impact of this freeze, the General Assembly finds that all such employees should receive salary increments on the State's salary schedule in the 1985-86 fiscal year as adopted pursuant to Chapters 115C, 115D, 116, 120, and 126 of the General Statutes.

"Therefore, notwithstanding the provisions of Section 19.1 of Chapter 1137, Session Laws of 1979 (Regular Session 1980) as amended by Chapter 1053, Session Laws of 1981, and notwithstanding G.S. 115C-12(9)a., G.S. 115C-12(16), G.S. 126-7, or any other provision of law, each employee of the State and State-funded employee of the public schools paid on the basis of a State salary increment schedule shall receive increments in the 1985-86 fiscal year as follows:

- "(1) All State employees supported from the Highway Fund or the General Fund and those supported by receipts to the extent that receipts are available, except those covered by Section 203 of this act, shall receive two half-step increases but not more than two half-step increases on their respective State salary schedules in fiscal year 1985-86, payable on the same basis as was in effect prior to the freeze of automatic and merit salary increments, except such State employees for fiscal year 1985-86 only shall qualify for the additional half-step increments on a one hundred percent (100%) basis. In further recognition of the impact of the freeze on automatic and merit salary increments, an additional salary increment step shall be added to all applicable State salary schedules for such State employees effective July 1, 1985. Notwithstanding the foregoing, employees subject to the State Personnel Act shall receive the half-step increases allocated on the same basis as was in effect prior to the freeze, except that the increases at all steps for employees with one year of continuous employment are to be awarded on the quarterly basis in effect prior to the freeze. As to employees covered by Section 197 of this act, other than those covered by the

fifth paragraph of that section, a break in service for a period not to exceed nine consecutive months, commencing on or after January 1, 1985, shall not constitute a break in the continuous employment of an employee required under this section.

"(2) All State-funded superintendents, associate superintendents, assistant superintendents, supervisors, directors, coordinators, program administrators, principals, assistant principals, and classroom and vocational teachers in the public schools shall receive the following number of half-step increases on their respective State salary schedules in fiscal year 1985-86:

"a. Employees who have worked continuously for at least one full year or one full school term but less than two full years or two full school terms for a local or State educational agency on June 30, 1985 — two half-step increases.

"b. Employees who have worked continuously for at least two full years or two full school terms for a local or State educational agency on June 30, 1985 — four half-step increases.

"In further recognition of the impact of the freeze on automatic salary increments, an additional salary increment step shall be added to the respective State salary schedules for these certified State-funded public school personnel, effective July 1, 1985.

"(3) All State-funded non-certified public school employees shall be treated the same as all State-funded State employees as covered in the preceding subsection (1).

"(b) The General Assembly hereby expresses its intent, that for fiscal year 1986-87, in order to avoid further freezes on automatic and merit salary increases for State, community college and public school employees supported by the State, automatic and merit salary increments shall be based upon half-step increases, provided General and Highway Fund revenues for 1986-87 are sufficient to fund half-step increases.

"(c) Effective July 1, 1985, the Director of the Budget may transfer from the salary increase reserve funds in Sections 2 and 3 of this act, funds necessary to implement the provisions of this section."

Session Laws 1985, c. 757, s. 145(b) provides: "Local acts establishing payroll dates for local school administrative units do not apply to payments made to employees through the central payroll system. Payments to employees that are made through a local payroll system may be made on the statewide payroll dates or on the payroll dates set by local act, at the discretion of the local boards of education."

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added subdivision (18).

The 1985 amendment by c. 479, s. 55(c)(3), effective July 1, 1985, rewrote paragraph (9)c.

The 1985 amendment by c. 757, s. 145(a), effective July 1, 1985, rewrote subdivision (18).

CASE NOTES

Applied in *Floyd v. Lumberton City Bd. of Educ.*, — N.C. App. —, 324 S.E.2d 18 (1984).

§ 115C-13. Duty to maintain confidentiality of certain records.

Except as otherwise provided by federal law, local boards of education and their officers and employees shall provide to the State Board and to the Superintendent all information needed to carry out their duties. It is unlawful for any member of the State Board of Education, the Superintendent of Public Instruction, or any em-

ployee or officer of the State Board of Education or the Department of Public Instruction to disclose any of this information that the local board or its officers or employees could not lawfully disclose. This disclosure is a misdemeanor, punishable by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), imprisonment, or both. (1985, c. 757, s. 145(j).)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

§ 115C-14. Election to be paid by payroll check.

Notwithstanding the provisions of section 145 of Chapter 757 of the 1985 Session Laws, an employee who has received at least one payroll check from a local school administrative unit may elect, when that local school administrative unit is included in the central payroll system, to continue to be paid by payroll check instead of by electronic funds transfer. This election shall be made in writing on a form provided by the State Board. An employee, who has been paid by electronic funds transfer through the central payroll system by a local school administrative unit may not elect to be paid by that local school administrative unit via payroll check.

The payroll check of an employee who elects to be paid by payroll check pursuant to the provisions of this section shall be mailed to the employee from the office of the State Board in Raleigh on the day it is due. (1985, c. 757, s. 145(k).)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

Section 145 of Chapter 757 of Session Laws 1985, of which this section is a

part, also amended §§ 115C-12, 115C-29, 115C-47, 115C-272, 115C-285, 115C-302 and 115C-316 and added this section and § 115C-13.

§§ 115C-15 to 115C-17: Reserved for future codification purposes.

ARTICLE 3.

Department of Public Instruction.

§ 115C-20. Office and salary.

The Superintendent of Public Instruction shall keep his office in the Education Building in Raleigh, and his salary shall be set by the General Assembly in the Current Operations Appropriations Act. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2; 1969, c. 1214, s. 2; 1971, c. 912, s. 2; 1973, c. 778, s. 2; 1975, 2nd Sess., c. 983, s. 17; 1977, c. 802, s. 42.15; 1981, c. 423, s. 1; 1983, c. 761, s. 210; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted

reference to the Current Operations Ap- Budget Appropriations Act in this sec-
propriations Act for reference to the tion.

§ 115C-21. Powers and duties generally.

(a) Administrative Duties. — It shall be the duty of the Superintendent of Public Instruction:

- (1) To organize and establish, subject to the approval of the State Board of Education, a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system: Provided, however, all appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction shall be under the control and management of the Superintendent of Public Instruction.
- (2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.
- (3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.
- (4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.
- (5) To have under his direction, in his capacity as the constitutional administrative head of the public school system, all those matters relating to the supervision and administration of the public school system, except the supervision and management of the fiscal affairs of the Board.

(1955, c. 1372, art. 2, s. 2; art. 3, ss. 3, 4; 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, ss. 2, 3; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1985, c. 479, s. 37.)

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

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, substituted the proviso at the end of the

first sentence of subdivision (a)(1) for a former second sentence, which read "All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction shall be subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System."

§ 115C-22. Alcohol and Drug Defense Program established.

There is established in the Department of Public Instruction the Alcohol and Drug Defense (ADD) Program. The Program shall be a new initiative to give the Superintendent of Public Instruction statewide responsibility to address systematically alcohol and drug problems of school aged youth.

The ADD Program shall:

- (1) Provide planning, consultation, and direct services to local school boards, school personnel, parent-teacher-student organizations, community teams, and the divisions of the Department of Public Instruction that can affect substance abuse;
- (2) Perform a complete comprehensive survey of existing prevention, intervention, treatment, and policy activities within the public schools;
- (3) Identify, mobilize, and coordinate resources for immediate action throughout the State;
- (4) Develop a model approach that is flexible enough to be tailored to community needs and resources;
- (5) Coordinate alcohol- and drug-specific curriculum-development and implementation;
- (6) Consult with local school boards on the development of school policies to reduce substance use and possession on school property and at school activities;
- (7) Consult directly with school personnel regarding appropriate intervention and referral of students in trouble;
- (8) Train health education coordinators, teachers, and others on the identification of substance use and steps to take with students;
- (9) Coordinate with higher education, teacher organizations, and alcohol and drug professionals;
- (10) Act as a liaison between the Department of Public Instruction and other agencies addressing the substance abuse problem;
- (11) Perform other services as directed by the State Board of Education and the Superintendent of Public Instruction; and
- (12) Report regularly to the Superintendent of Public Instruction, the State Board of Education, and the General Assembly on the status of substance abuse among school-aged children. (1985, c. 757, s. 79(a).)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

§§ 115C-23 to 115C-26: Reserved for future codification purposes.

ARTICLE 4.

*Office of the Controller.***§ 115C-27. Appointment of controller; salary.**

The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board. The salary of the Controller shall be fixed by the General Assembly in the Current Operations Appropriations Act. (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; 1981, c. 423, s. 1; 1983, c. 717, s. 25; 1985, c. 479, s. 220.)

Editor's Note. —

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, rewrote the second sentence, which formerly read "The salary of the controller shall be fixed by the Governor and the State Board of Education after consultation with the Advisory Budget Commission and shall be paid from Board appropriations."

§ 115C-29. Controller's powers and duties generally.

(b) The controller, under the direction of the Board, shall perform the following duties:

- (1) He shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the Board and particularly the following:
 - a. State appropriation for maintenance of the public school term, which shall include all the objects of expenditure enumerated in G.S. 115C-426.
 - b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.
 - c. State literary and building funds and such other building funds as may be hereafter provided by the General Assembly for loans, or grants, to local boards of education for school building purposes.
 - d. State and federal funds for vocational education and other funds as may be provided by act of Congress for assistance to the educational program.
 - e. State appropriation for the maintenance of the Board and its office personnel and including all employees serving under the Board.
 - f. Any miscellaneous funds within the jurisdiction of the Board not included in the above.
- (2) He shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the Board in preparing the State budget estimates required to be determined by the Board as to each local school administrative unit.

- (3) He shall certify to each local school administrative unit the teacher allotment as determined by the Board under G.S. 115C-301. The superintendent of the administrative units shall then certify to the Superintendent the names of the persons employed as teachers and principals by districts. The Superintendent shall then determine the certificate ratings of the teachers and principals, shall certify such ratings to the controller, who shall then determine in accordance with the State standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each local school administrative unit for teachers and principals to be included in the State budget for the current fiscal year.
- (4) He shall satisfy himself before issuing any requisition upon the Department of Administration for payment out of the State treasury of any funds placed to the credit of any local school administrative unit, under the provisions of G.S. 115C-438:
 - a. That funds are lawfully available for the payment of such requisition; and
 - b. Where the order covers salary payment to any employee that the amount thereof is within the salary schedule or salary rating of the particular employee.
- (5) He shall procure, through the Department of Administration, contracts for the purchase of the estimated needs and requirements of the several local school administrative units, covering the items of janitor supplies, instructional supplies, supplies used by the State Board of Education, and all other supplies, the payment for which is made from funds committed to the administration of the Board.
- (6) He shall purchase from the various publishers the textbooks needed and required in the public schools in accordance with contracts made by the State Board of Education.
- (7) Repealed by Session Laws 1983, c. 913, s. 16, effective July 22, 1983.
- (8) He shall attend all meetings of the Board and shall furnish all such information and data concerning the fiscal affairs of the Board as the Board may require.
- (9) He shall employ all necessary administrative and supervisory employees who work under his direction in the administration of the fiscal affairs of the Board, subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System.
- (10) He shall report directly to the Board upon all matters coming within his supervision and management.
- (11) He shall furnish to the Superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties.
- (11a) He shall have responsibility for the successful implementation of the central payroll system. This responsibility shall include recommending to the Board a systematic

evaluation and selection process for qualifying vendors to specify payroll software requirements, systems software requirements, systems software and hardware, and any other expertise necessary to the central payroll requirements definition, system design, or implementation. It shall further include the responsibility to recommend to the Board termination of any contractual relationship where the contractor's performance is not meeting previously agreed upon performance standards, product standards, or deadlines. He shall report his progress monthly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Commission.

- (12) He shall perform such other duties as may be assigned to him by the Board from time to time. (1955, c. 1372, art. 4, s. 1; 1957, c. 269, s. 1; 1975, c. 437, s. 15.1; c. 699, s. 4; c. 879, s. 46; 1981, c. 423, s. 1; 1983, c. 913, s. 16; 1985, c. 757, s. 145(m).)

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

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, added subdivision (b)(11a).

ARTICLE 5.

Local Boards of Education.

§ 115C-35. How constituted.

CASE NOTES

Cited in *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

§ 115C-37. Election of board members.

(d) **Members to Qualify.** — Each county board of education shall hold a meeting in December following the election. At that meeting, newly elected members of the board of education shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution.

This subsection shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people.

(h) **Death or Disqualification of Candidate in Nonpartisan Election.** — If a candidate dies or becomes disqualified after the filing period has closed and before the election, and the ballots have not been printed, the county board of elections shall immediately reopen the filing period for five days so that additional candidates may file for election. If the ballots have been printed at the time the board of elections receives notice of the death or disqualification, the board shall reopen the filing period for three days if the board

determines it will have time to reprint the ballots before the election.

In the event the board of elections determines that there is not time enough to reopen the filing period for three days and to reprint the ballots, then the ballots shall not be reprinted and the name of the deceased or disqualified candidate shall remain on the ballot. Votes cast for such candidate shall not be considered and the candidates receiving the highest number of votes equal to the number of positions to be filled shall be elected. (1955, c. 1372, art. 5, ss. 2-8; 1967, c. 972, ss. 2-6; 1969, c. 1301, s. 2; 1971, c. 704, s. 6; 1973, c. 1446, s. 1; 1977, c. 662; 1981, c. 423, s. 1; 1985, c. 404; c. 405, ss. 1, 2.)

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

Effect of Amendments. — The 1985 amendment by c. 404, effective June 17, 1985, added subsection (h).

The 1985 amendment by c. 405, effective June 17, 1985, rewrote the first paragraph of subsection (d).

§ 115C-40. Board a body corporate.

CASE NOTES

Board Has Legal Existence, etc. — County board of education is a corporate body which has a legal existence

separate and apart from its members. *Miller v. Henderson*, 71 N.C. App. 366, 322 S.E.2d 594 (1984).

§ 115C-42. Liability insurance and immunity.

Any local 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 shall be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State or by a qualified insurer as determined by the Department of Insurance and shall by its terms adequately insure the local board of education against liability for damages by reason of death or injury to person or property proximately caused by the negligent act or torts of the agents and employees of said board of education or the agents and employees of a particular school in a local administrative unit when acting within the scope of their authority. The local board of education shall determine what liabilities and what officers, agents and employees shall be covered by any insurance purchased pursuant to this section. Any company or corporation which enters into a contract of insurance as above described with a local board of education, by such act waives any defense based upon the governmental immunity of such local board of education.

Every local 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 local 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 local board of education if, and to the extent, such local 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 local 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 local 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 local 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 Public School Fund. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3; 1981, c. 423, s. 1; 1985, c. 527.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, in the first sentence of the second paragraph substituted "shall" for "must" in two places, inserted "or by a qualified insurer as determined by the Department of Insurance," substituted "against liability for damages" for "against any

and all liability for any damages," substituted "negligent act or torts" for "negligent acts or torts," and deleted "or within the course of their employment" following "when acting within the scope of their authority," and inserted the present second sentence.

CASE NOTES

Applicability of section. — This section does not apply to the type of claims which are covered by § 143-300.1. Smith

v. McDowell County Bd. of Educ., 68 N.C. App. 541, 316 S.E.2d 108 (1984).

§ 115C-45. Judicial functions of board.

CASE NOTES

Applied in Murphy v. McIntyre, 69 N.C. App. 323, 317 S.E.2d 397 (1984).

§ 115C-46. (Effective July 1, 1986) Powers of local boards to regulate parking of motor vehicles.

(a) Any local 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. A violation of a rule or regulation concerning parking on public school grounds is an infraction punishable by a penalty of not more than ten dollars (\$10.00) unless the regulation provides that the violation is not punishable as an infraction. Rules and regulations adopted hereunder shall be made available for inspection by any person upon request.

(b) Any local 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 local 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 local 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 local 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 local board of education, may be removed from school grounds to a place of storage and the registered owner of that 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; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1239, s. 2; 1983, c. 420, s. 3; 1985, c. 764, s. 37.)

For this section as in effect until July 1, 1986, see the main volume.

Editor's Note. — Session Laws 1985, c. 764, s. 40 provides that offenses committed before the effective date of the act (July 1, 1986) shall be governed by the law in effect at the time of the offense.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1986, and applicable to offenses committed on or after that date, substituted the present second sentence of subsection (a) for the former second and third

sentences thereof, which read "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."

§ 115C-47. (For effective date see notes) Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- (1) **To Provide an Adequate School System.** — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.
- (2) **To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions.** — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.
- (3) **To Divide Local School Administrative Units into Attendance Areas.** — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.
- (4) **To Regulate Extracurricular Activities.** — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.
- (5) **To Fix Time of Opening and Closing Schools.** — The time of opening and closing the public schools shall be fixed pursuant to the provisions of G.S. 115C-84(e).
- (6) **To Regulate Fees, Charges and Solicitations.** — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

- (7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.
- (8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.
- (9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.
- (10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to determine if any exceptions occur during the school year in the allowed maximums. If additional pupils are enrolled so as to cause assignment of pupils in excess of the allowed maximums, except for an emergency or act of God, it shall be the duty of any affected teacher and of the principal to notify the superintendent, who shall immediately report the deviation to the local board of education. Upon notification of excess deviations in the maximum class size, local boards shall take correctional steps and shall transfer teaching positions between schools, if necessary, to correct the excess deviation. If the local board cannot remedy the situation, it shall immediately apply to the State Board of Education for contingency funds for additional personnel to correct exceptions. Excess deviations which cannot be corrected by transfer of teachers and by use of contingency funds shall be temporarily allowed with permission of the State Board of Education.

At the end of the first month of school each year, the superintendent of each administrative unit shall file a report for each school with the State Board of Education. This report shall be filed on forms furnished by the board and shall indicate the complete organization of each school, the duties of each teacher or other instructional personnel, and the class size or teaching load of each teacher.

It shall be the duty of local boards of education to provide adequate classroom facilities to meet the requirements of this subdivision and of G.S. 115C-301.

- (11) To Determine the Length of the School Day, the School Month and the School Term. — Local boards of education shall determine the length of the school day, the school month and the school term pursuant to the provisions of G.S. 115C-84(a) through (c).
- (12) To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.
- (13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.
- (14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.
- (15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).
- (16) To Remove a Superintendent or Committeeman, When Necessary. — Local boards of education shall remove a superintendent or a committeeman for cause, pursuant to the provisions of G.S. 115C-59 and 115C-274(a).
- (17) To Employ Assistant Superintendents and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).
- (18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.
- (19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.
- (20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

- (21) To Pay School Employees. — It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. Local boards shall provide the State Board with any information needed by it to ensure the prompt monthly payment of employees of local boards who are paid through the central payroll system established under G.S. 115C-12(18). All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302(b) and 115C-316(b).

For employees not paid through the central payroll system, the authority for local boards of education to issue salary vouchers shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school.

- (22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.
- (23) To Purchase Equipment and Supplies. — They shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a).
- (24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. The State Board of Education shall inspect each activity bus and recommend to the board whether the bus should be replaced but replacements will be determined by the local board of education. Such replacement units for activity buses shall be financed with local funds.
- (25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.
- (26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

- (27) To Provide Retirement Age. — The local board of education may by resolution provide that every administrative officer whom it elects and every certificated personnel who serve that local school administrative unit shall retire on July 1, coincident with or next following their seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the local board of education.
- (28) To Enter Lease Purchase Contracts for Automobiles. — Local boards may purchase automobiles by installment contracts that create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this subdivision is subject to the provisions of Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). The lease purchase contract shall provide that there be no recourse for default in payments under the contract other than return of the automobile. The taxing power of any tax levying authority is not and may not be pledged directly or indirectly to secure any moneys due the seller.
- (29) To Authorize the Observance of a Moment of Silence. — Local boards of education may adopt policies to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 6; c. 1185, 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 539; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2.1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, s. 55(c)(4); c. 637; c. 757, s. 145(i).)

Section Set Out Twice. — The section above is effective until the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. For this section as amended effective at that time, see the following section, also numbered § 115C-47.

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 55(c)(8) and (c)(9), provide:

"(8) Nothing in this subsection creates any rights except to the extent that

funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 and Session Laws 1985, c. 479, s. 230 are severability clauses.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment by c. 1019, s. 2.1, effective October 1, 1984, added subdivision (27).

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 16, effective July 1,

1985, in the first paragraph of subdivision (21) substituted "It is" for "It shall be" at the beginning of the first sentence and inserted the present second sentence, and in the third paragraph of subdivision (21) rewrote the first sentence, which read "The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the Controller of the State Board of Education."

The 1985 amendment by c. 436, s. 1, effective June 21, 1985, added subdivision (28).

The 1985 amendment by c. 479, s. 55(c)(4), effective July 1, 1985, rewrote

subdivision (12), which formerly read, "To Provide for Efficient Teaching of Subjects in the Outline Course of Study.—Local boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the Superintendent of Public Instruction, as provided in G.S. 115C-81(b)."

The 1985 amendment by c. 637, effective July 5, 1985, and applicable to all school years beginning with the 1985-86 school year, added subdivision (29), authorizing the observance of a moment of silence.

The 1985 amendment by c. 757, s. 145(i), effective July 1, 1985, substituted "central" for "centralized" in subdivision (21).

§ 115C-47. (For effective date see notes) Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- (1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.
- (2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.
- (3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.
- (4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.
- (5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed pursuant to the provisions of G.S. 115C-84(e).
- (6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the min-

utes of said board; provided, this subdivision shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

- (7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.
- (8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.
- (9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.
- (10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to determine if any exceptions occur during the school year in the allowed maximums. If additional pupils are enrolled so as to cause assignment of pupils in excess of the allowed maximums, except for an emergency or act of God, it shall be the duty of any affected teacher and of the principal to notify the superintendent, who shall immediately report the deviation to the local board of education. Upon notification of excess deviations in the maximum class size, local boards shall take correctional steps and shall transfer teaching positions between schools, if necessary, to correct the excess deviation. If the local board cannot remedy the situation, it shall immediately apply to the State Board of Edu-

cation for contingency funds for additional personnel to correct exceptions. Excess deviations which cannot be corrected by transfer of teachers and by use of contingency funds shall be temporarily allowed with permission of the State Board of Education.

At the end of the first month of school each year, the superintendent of each administrative unit shall file a report for each school with the State Board of Education. This report shall be filed on forms furnished by the board and shall indicate the complete organization of each school, the duties of each teacher or other instructional personnel, and the class size or teaching load of each teacher.

It shall be the duty of local boards of education to provide adequate classroom facilities to meet the requirements of this subdivision and of G.S. 115C-301.

- (11) To Determine the Length of the School Day, the School Month and the School Term. — Local boards of education shall determine the length of the school day, the school month and the school term pursuant to the provisions of G.S. 115C-84(a) through (c).
- (12) To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.
- (13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.
- (14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.
- (15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).
- (16) To Remove a Superintendent or Committeeman, When Necessary. — Local boards of education shall remove a superintendent or a committeeman for cause, pursuant to the provisions of G.S. 115C-59 and 115C-274(a).
- (17) To Employ Assistant Superintendents and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).
- (18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.
- (19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or

acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) To Pay School Employees. — It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. Local boards shall provide the State Board with any information needed by it to ensure the prompt monthly payment of employees of local boards who are paid through the central payroll system established under G.S. 115C-12(18). All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302(b) and 115C-316(b).

For employees not paid through the central payroll system, the authority for local boards of education to issue salary vouchers shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — They shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a).

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. The State Board of Education shall inspect each activity bus and recommend to the board whether the bus should be replaced but replacements will be determined by the local board of education. Such replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting

representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

- (27) **To Provide Retirement Age.** — The local board of education may by resolution provide that every administrative officer whom it elects and every certificated personnel who serve that local school administrative unit shall retire on July 1, coincident with or next following their seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the local board of education.
- (28) **To Enter Lease Purchase Contracts for Automobiles.** — Local boards may purchase automobiles by installment contracts that create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this subdivision is subject to the provisions of Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). The lease purchase contract shall provide that there be no recourse for default in payments under the contract other than return of the automobile. The taxing power of any tax levying authority is not and may not be pledged directly or indirectly to secure any moneys due the seller.
- (29) **To Authorize the Observance of a Moment of Silence.** — Local boards of education may adopt policies to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 6; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 539; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2.1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, s. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i).)

Section Set Out Twice. — The section above is effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. For this section as in effect until that time, see the preceding section, also numbered § 115C-47.

Editor's Note. —

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 55(c)(8) and (c)(9), provide:

"(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Effect of Amendments. —

The 1985 amendment by c. 436, s. 1, effective June 21, 1985, added subdivision (28).

The 1985 amendment by c. 479, s. 55(c)(4), effective July 1, 1985, rewrote subdivision (12), which formerly read "To Provide for Efficient Teaching of Subjects in the Outline Course of Study. — Local boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the Superintendent of Public Instruction, as provided in G.S. 115C-81(b)."

The 1985 amendment by c. 479, s. 55(c)(6), effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program, substitutes "Basic Education Program" for "standard course of study" at the end of subdivision (12).

The 1985 amendment by c. 637, effective July 5, 1985, and applicable to all school years beginning with the 1985-86 school year, added subdivision (29), authorizing the observance of a moment of silence.

The 1985 amendment by c. 757, s. 145(i), effective July 1, 1985, substituted "central" for "centralized" in subdivision (21).

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.

ARTICLE 7.

Organization of Schools.

§ 115C-67. Merger of units in same county.

CASE NOTES

Applied in *Floyd v. Lumberton City Bd. of Educ.*, — N.C. App. —, 324 S.E.2d 18 (1984).

§ 115C-69. Types of districts defined.

CASE NOTES

Applied in *Floyd v. Lumberton City Bd. of Educ.*, — N.C. App. —, 324 S.E.2d 18 (1984).

§ 115C-70. Creation and modification of school districts by State Board.

CASE NOTES

Applied in *Floyd v. Lumberton City Bd. of Educ.*, — N.C. App. —, 324 S.E.2d 18 (1984).

SUBCHAPTER IV. EDUCATION PROGRAM.

ARTICLE 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. (For effective date see notes) Basic Education Program.

(a) The State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association. The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1993.

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational education.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

- (1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically gifted, and the students with discipline and emotional problems;
- (2) A set of competencies, by grade level, for each curriculum area;
- (3) A list of textbooks for use in providing the curriculum;
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation;
- (5) A program of remedial education;
- (6) Required support programs;
- (7) A definition of the instructional day;
- (8) Class size recommendations and requirements;
- (9) Prescribed staffing allotment ratios;
- (10) Material and equipment allotment ratios;
- (11) Facilities standards; and

(12) Any other information the Board considers appropriate and necessary.

(c) Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the standard course of study, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, and the dangers of harmful or illegal drugs, including alcohol.

Local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(d) The standard course of study as it exists on January 1, 1985, and as subsequently revised by the State Board, shall remain in effect until its components have been fully incorporated and implemented as a part of the Basic Education.

(e) School Health Education Program to Be Developed and Administered. —

(1) 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.

(2) 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.

(3) The development and administration of this program shall be the responsibility of each local school administrative unit in the State, a local school health education coordinator for each county, the Department of Public Instruction, and a State School Health Education Advisory Committee.

(4) Each existing local school 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.

(5) The 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 the Department of Public Instruction shall be assigned responsibilities as set forth in this subsection.

(6) A State School Health Advisory Committee is hereby established.

a. 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

subsection, and encourage development of higher education programs which would benefit health education in the public schools.

- b. 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.
- c. 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, Department of Human Resources; the Chief, State Health Planning and Development Agency, Department of Human Resources; and the Superintendent of Public Instruction, or their designees. 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.
- d. The appointed members of the advisory committee shall serve for a term of 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.

(f) Establishment and Maintenance of Kindergartens. —

- (1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in G.S. 115C-81(f) and 115C-82.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

- (2) Any child who has passed the fifth anniversary of his birth on or before October 16 of the year in which he enrolls shall be eligible for enrollment in kindergarten.
- (3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program. (1955, c. 1372, art. 5, s. 20; art. 23, ss. 1, 5, 6; 1957, cc. 845, 1101; 1969, c. 487, ss. 1, 2; 1971, c. 356; 1973, c. 476, s. 128; 1975, c. 65, ss. 1, 2; 1977, 2nd Sess., c. 1256, s. 1; 1981, c. 423, s. 1; 1983, c. 656, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 81; c. 1103, s. 2; 1985, c. 479, s. 55(c)(1).)

Section Set Out Twice. — The section above is effective until the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. For this section as amended effective at that time, see the following section, also numbered § 115C-81.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 80, provides: "The Superintendent of Public Instruction shall intensify his efforts under G.S. 115C-81(a) to provide appropriate outlines for the teaching of the dangers of harmful or illegal drugs, including alcohol."

"Local boards of education shall place more emphasis on the instruction required by G.S. 115C-81(b) on the dangers of harmful or illegal drugs, including alcohol."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Elementary and Secondary School Reform Act of 1984'."

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 55(c)(5) provides:

"The State Board may permit local pilot programs on an annual basis to deviate from the Basic Education Program in order to encourage improvement through innovation. These local deviations and the purposes for each shall be described in the annual report required pursuant to G.S. 115C-81 before piloting begins. The achievement of purposes for each pilot program with recommendations shall also be reported. These local deviations shall be described in the annual report required pursuant to G.S. 115C-81 with accompanying rationale and recommendations."

Session Laws 1985, c. 479, s. 55(c)(8) and (c)(9), provide:

"(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to imple-

ment the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 81, effective July 1, 1984, inserted the present third paragraph of subsection (a).

The 1983 (Reg. Sess., 1984) amendment by c. 1103, s. 2, effective July 6, 1984, substituted the present first and second paragraphs of subsection (a), with subdivisions (1) through (10), for a former first paragraph.

The 1985 amendment, effective July 1, 1985, substituted present subsections (a), (a1), (b), (c) and (d) for former subsections (a), (b), (c) and (d).

§ 115C-81. (For effective date see notes) Basic Education Program.

(a) The State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association. The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1993.

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational education.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

(1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically gifted, and the students with discipline and emotional problems;

- (2) A set of competencies, by grade level, for each curriculum area;
- (3) A list of textbooks for use in providing the curriculum;
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation;
- (5) A program of remedial education;
- (6) Required support programs;
- (7) A definition of the instructional day;
- (8) Class size recommendations and requirements;
- (9) Prescribed staffing allotment ratios;
- (10) Material and equipment allotment ratios;
- (11) Facilities standards; and
- (12) Any other information the Board considers appropriate and necessary.

(c) Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the Basic Education Program, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, and the dangers of harmful or illegal drugs, including alcohol.

Local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(d) The standard course of study as it exists on January 1, 1985, and as subsequently revised by the State Board, shall remain in effect until its components have been fully incorporated and implemented as a part of the Basic Education.

(e) School Health Education Program to Be Developed and Administered. —

- (1) 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.
- (2) 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.
- (3) The development and administration of this program shall be the responsibility of each local school administrative unit in the State, a local school health education coordinator for each county, the Department of Public Instruction, and a State School Health Education Advisory Committee.
- (4) Each existing local school 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.
- (5) The 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 the Department of Public Instruction shall be assigned responsibilities as set forth in this subsection.

(6) A State School Health Advisory Committee is hereby established.

a. 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 subsection, and encourage development of higher education programs which would benefit health education in the public schools.

b. 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.

c. 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, Department of Human Resources; the Chief, State Health Planning and Development Agency, Department of Human Resources; and the Superintendent of Public Instruction, or their designees. 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 Con-

ference 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.

- d. The appointed members of the advisory committee shall serve for a term of 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.

(f) Establishment and Maintenance of Kindergartens. —

- (1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in G.S. 115C-81(f) and 115C-82.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

- (2) Any child who has passed the fifth anniversary of his birth on or before October 16 of the year in which he enrolls shall be eligible for enrollment in kindergarten.
- (3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program. (1955, c. 1372, art. 5, s. 20; art. 23, ss. 1, 5, 6; 1957, cc. 845, 1101; 1969, c. 487, ss. 1, 2; 1971, c. 356; 1973, c. 476, s. 128; 1975, c. 65, ss. 1, 2; 1977, 2nd Sess., c. 1256, s. 1; 1981, c. 423, s. 1; 1983, c. 656, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 81; c. 1103, s. 2; 1985, c. 479, s. 55(c)(1), 55(c)(2).)

Section Set Out Twice. — The section above is effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. For this section as in effect until that time, see the preceding section, also numbered § 115C-81.

Editor's Note. —

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 55(c)(5) provides:

"The State Board may permit local pilot programs on an annual basis to deviate from the Basic Education Program in order to encourage improvement through innovation. These local deviations and the purposes for each shall be described in the annual report required pursuant to G.S. 115C-81 before piloting begins. The achievement of purposes for each pilot program with recommendations shall also be reported. These local deviations shall be described in the annual report required pursuant to G.S. 115C-81 with accompanying rationale and recommendations."

Session Laws 1985, c. 479, s. 55(c)(8) and (c)(9), provide:

"(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1985 amendment by c. 479, s. 55(c)(1), effective July 1, 1985, substituted present subsections (a), (a1), (b), (c) and (d) for former subsections (a), (b), (c) and (d).

The 1985 amendment by c. 479, s. 55(c)(2), effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program, substitutes "Basic Education Program" for "standard course of study" in subdivision (c).

Part 2. Calendar.

§ 115C-84. Length of school day, month, and term; Veterans Day.

(c) **School Term.** — There shall be operated in every school in the State a uniform school term of 180 days for instructing pupils. For up to two of these days during the school year on which schools are closed due to hazardous weather conditions, natural disaster or other emergency, local boards of education may excuse teachers and students from attendance without requiring that the days be made up or affecting teachers' pay. If the last day of school would otherwise be a Monday, a local board of education may also excuse teachers and students from attendance for a third such day. For up to 60 of these days, when in the sound judgment of the State Board of Education, or the local board with the approval of the State Board, conditions justify the suspension of school, the State Board of Education or the local board with the approval of the State Board, may suspend operation of a school and for 15 of these days, teachers shall be entitled to normal pay. Local boards of education are directed to report all days waived to the State Board of Education. Such report shall include justification for their actions.

Full authority is hereby given to the State Board of Education during any period of emergency to order general, and if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary.

(1955, c. 1372, art. 5, ss. 18, 19; 1957, c. 262; 1963, c. 425; c. 1223, s. 2; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; c. 678; 1971, c. 85; c. 90, s. 1; 1973, c. 1137; 1977, c. 1128; 1979, c. 1069, s. 1.1; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 15.1; 1985, c. 791, ss. 7, 8.)

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

Effect of Amendments. —

The 1985 amendment, effective July

1, 1985, substituted "up to two" for "up to five" in the second sentence of subsection (c) and inserted the present third sentence of subsection (c).

Part 3. Textbooks.

§ 115C-100. Rental fees for textbooks prohibited; damage fees authorized.

No local board of education may charge any pupil a rental fee for the use of textbooks. A pupil's parents or legal guardians may be charged damage fees for abuse or loss of textbooks under rules adopted by the State Board of Education. All money collected on State-owned books as damage fees or from the sale of books under the provisions of this Part shall be paid annually as collected to the State Board of Education. (1969, c. 519, s. 1; 1981, c. 423, s. 1; 1983, c. 549, s. 2; 1985, c. 581, s. 1.)

Effect of Amendments. —

The 1985 amendment, effective July 3, 1985, rewrote the second sentence, which read "Damage fees may be

charged for abuse or loss of textbooks under rules and regulations promulgated by the State Board of Education."

Part 4. Fees.

§ 115C-103. Fees.

Fees, charges and costs may be collected from students, their parents or guardians, and school personnel in accordance with the provisions of G.S. 115C-47(6). (1981, c. 423, s. 1; 1985, c. 581, s. 2.)

Effect of Amendments. —

The 1985 amendment, effective July

3, 1985, inserted "their parents or guardians."

ARTICLE 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 61 and Session Laws 1985, c. 479, s. 85, set out legislative findings

with regard to the children identified as a class in the case of Willie M., et al. vs. Hunt, et al. The sections also indicate legislative intent with regard to the ex-

penditure of funds appropriated for the class members and provide for a supplemental reserve fund to be allocated to local education agencies to serve class members. In addition, the sections set out reporting requirements and authorize the Department of Human Resources to ensure the provision of appropriate services to class members where a local program is not providing appropriate services.

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 76, provides that in addition to reports required by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 61, the Department of Human Resources and Public Education shall report periodically to the Commission on Children with Special Needs, as requested by the Commission, on operations of programs to benefit Willie M. class members.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and c. 1116, s. 115, are severability clauses.

Session Laws 1985, c. 791, s. 18 provides that the Department of Public Education shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division 30 days prior to the convening of the 1986 Regular Session of the 1985 General Assembly on the cost of educating a Willie M. child in the public schools over the past three years. This report shall include the cost of educating a Willie M. child and the source of these funds.

Session Laws 1985, c. 791, s. 18.1 directs the State Board of Education to determine the most cost effective methods of educating Willie M. students and to report its findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by March 1, 1986.

§ 115C-108. Definition of special education and related services.

The term "special education" means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a special needs child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term also includes speech pathology, audiology, occupational and physical therapy. The term "related services" means transportation for handicapped children with special needs who are unable because of their handicap to ride the regular school buses and such developmental, corrective and other supportive services as are required to assist a special needs child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes only. The term also includes school social work services, parent counseling and training, providing parents with information about child development and assisting parents in understanding the special needs of their child. Other similar services, materials and equipment may be provided as approved by regulations adopted by the State Board of Education. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1985, c. 479, s. 26(a).)

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, inserted "for handicapped children with special needs who are unable because of their handicap to ride the regular school buses" in the third sentence.

§ 115C-109. Definition of children with special needs.

The term "children with special needs" includes, without limitation, all children from age five through age 20 who because of permanent or temporary mental, physical or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiply handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually impaired, other health impaired, and academically gifted. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 23, 24; 1985, c. 780, ss. 3, 4.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 780, s. 5 provides that the act shall be administered from funds appropriated to the Department of Public Instruction for fiscal years 1985-86 and 1986-87 and shall not necessitate additional appropriations for those years.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted

"from five through 18" for "between the ages of five and 18" in the first sentence and inserted the present second sentence.

The 1985 amendment, effective July 17, 1985, substituted "from age five through age 20" for "from five through 18" in the first sentence and deleted the former second sentence, which read "Children who become 19 years old during the school year may complete that school year."

Part 2. Nondiscrimination in Education.

§ 115C-112. Disciplinary suspensions.

(a) In the event that a child with special needs exhibits behavior which, if the child were not a child with special needs, could result in the suspension or expulsion of the child from school for a period of more than 10 days or for periods that total more than 10 days, the local education agency shall require a multidisciplinary team promptly to review the evaluation already completed for the child and conduct any additional evaluations necessary to determine if the behavior is caused by the child's special needs, which evaluations shall include determining (1) whether the child is presently receiving appropriate education, and (2) whether medication is needed or present medication is appropriate. If the evaluation establishes no such relationship between the behavior and the special needs, the local education agency may initiate its normal disciplinary procedures. If the evaluation does establish such a relationship, the local education agency may not initiate its normal disciplinary procedures. The findings should be used in determining an appropriate program.

(1977, c. 927, s. 1; 1979, c. 874, s. 2; 1981, c. 423, s. 1; 1983, c. 247, s. 5; 1985, c. 464.)

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

Effect of Amendments. —

The 1985 amendment, effective June 25, 1985, deleted "consecutive" preceding "periods that total more than 10 days" in the first sentence of subsection (a).

§ 115C-115. (Effective July 1, 1986) Placements in private schools, out-of-state schools and schools in other local educational agencies.

The Board shall adopt rules and regulations to assure that:

- (1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.
- (2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.
- (3) If the placement of the child in a private school, or an out-of-state school determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Human Resources or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost. If the placement of the child in a school in another local educational agency is determined by the local superintendents to be the most cost effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Human Resources or the Department of Correction, the two local educational agencies shall enter into an agreement concerning the payment for services. The State is not obligated to provide any additional funds in this case. The State and local educational agencies shall be excused from payment of the costs of special education and related services in a private school if a child is placed in that school by his parents or guardian against the advice of the State or a local educational agency. (1977, c. 927, s. 1; 1979, 2nd Sess., c. 1299, s. 2; 1981, c. 423, s. 1; 1983, c. 768, s. 7; 1985, c. 465.)

For this section as in effect until July 1, 1986, see the bound volume.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1986, substituted "or an out-of-state school" for "out-of-state school or a

school in another local educational agency" near the beginning of the first sentence of subdivision (3) and inserted the present fourth and fifth sentences of subdivision (3).

Part 3. Appeals.

§ 115C-116. Exceptional children; special program; dissatisfaction with assignment; right to appeal.

(b) Notice. — The parent or guardian of a child placed or denied placement in a program shall be notified promptly, via parent or guardian conference, or by registered or certified mail, return receipt requested, of his placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to review of the determination and of the procedure for obtaining such review. The notice shall contain information that a hearing may be had upon written request, no more than 30 days from the date on which the notice was received. This hearing shall be before an impartial hearing officer appointed by the local school board, the Secretary of Human Resources or the Secretary of Corrections depending on which agency has jurisdiction. The impartial hearing officer shall be approved by the State Board of Education and shall have demonstrated to the State Board a sufficient knowledge of and familiarity with pertinent federal law and regulations as well as State law and regulations and applicable provisions of the Administrative Procedure Act. The parent or guardian of a child or the local education agency may, upon written request, not more than 30 days from the date of a decision, appeal the decision of the hearing officer to the State Superintendent of Public Instruction. Any appeal of the decision of the State Superintendent of Public Instruction to the General Court of Justice must be filed within 30 days after notice of the decision. The hearing, the agency review and the judicial review shall be conducted in accordance with Articles 3 and 4 of Chapter 150A of the General Statutes unless this section or pertinent federal law or regulation specifies otherwise.

(b1) Hearings. — If a hearing is requested by either a local education agency or parent or guardian, an impartial hearing officer approved by the State Board of Education shall be selected to hear the case. The State Department of Public Instruction, whose rules are established by the State Board of Education, shall provide a list of approved hearing officers to the parent and the local board. Both the parent and the local board shall have the privilege of striking an equal number of names from the list. After these strike-off privileges have been exercised the State Department of Public Instruction shall name the hearing officer from the remaining names. The hearing officer shall have no personal or professional interest that may interfere with his or her objectivity in a hearing. The State Board of Education shall establish procedures for training and monitoring of hearing officers and requirements that assure that hearing officers are knowledgeable concerning pertinent federal and

State laws and regulations as well as the Administrative Procedure Act. The parent or guardian of a child of the local education agency may, upon written request, not more than 30 days from the date the hearing decision is received, appeal the decision to the State Superintendent of Public Instruction, who shall make an impartial and independent decision in the case. In the local hearing and the State review, technical rules of evidence shall not apply. The decision of the State Superintendent of Public Instruction may be appealed to the General Court of Justice within 30 days after notice of the decision. The hearing, the agency review and the judicial review shall be conducted in accordance with Articles 3 and 4 of Chapter 150A of the General Statutes unless this section or pertinent federal law or regulation specifies otherwise.

(b2) Subpoenas. — State officials or employees and officials or employees of a local board of education who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for their witness days.

(1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2.)

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

Editor's Note. — Session Laws 1985, c. 412, s. 1 purported to amend subsection (b) of this section "by deleting the last four sentences beginning with the phrase 'This hearing shall contain information.'" However, the last four sentences of subsection (b) begin with the phrase "The impartial hearing officer." At the direction of the Revisor of Statutes, the amendment by Session Laws

1985, c. 412, s. 1 has therefore not been set out above.

Editor's Note. — Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Effect of Amendments. —

The 1985 amendment, effective October 1, 1985, designated former subsection (b1) as subsection (b2), and added a new subsection (b1).

Part 7. State Schools for Hearing-Impaired Children.

§ 115C-124. Pupils admitted; education.

The Department of Human Resources shall according to such reasonable regulations as the Board of Directors may prescribe, on application, receive into the schools for the purposes of education all deaf children resident of the State who are from age five through age 20 years: Provided, that the Department of Human Resources may admit students who are not within the age limits set forth above when in its judgment, such admission will be in the best interests of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The Department may fix charges and the Board of Directors may prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The Department shall provide for the instruction of all pupils in the branches of study now prescribed

by law for the public schools of the State and in such other branches as may be of special benefit to the deaf.

The Department shall encourage the State to provide the classrooms with modern auditory training equipment, audiovisual media equipment, and any other special equipment to provide the best educational conditions for the deaf. The Department shall provide a teacher training program in the State. The Department shall provide for a comprehensive vocational and technical training program for boys and girls as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 23; 1985, c. 780, s. 3.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 780, s. 5 provides that the act shall be administered from funds appropriated to the Department of Public Instruction for fiscal years 1985-86 and 1986-87 and shall not necessitate additional appropriations for those years.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "from five through 18" for "between the ages of five and 18" in the first sentence.

The 1985 amendment, effective July 17, 1985, substituted "from age five through age 20" for "from five through 18" in the first sentence of the first paragraph.

Part 8. State School for Sight-Impaired Children.

§ 115C-128. Admission of pupils; how admission obtained.

The Department of Human Resources shall, on application, receive in the institution for the purpose of education all blind children who are residents of this State and who are from age five through age 20 years: Provided, that pupils who are not within the age limits above set forth may be admitted to said institution in cases in which the Department of Human Resources finds that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the Department of Human Resources is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out-of-state facilities for any student who, because of peculiar conditions or disability, cannot be properly educated at the school in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C.S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279; 1973, c. 476, s. 164; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 23; 1985, c. 780, s. 3.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 780, s. 5 provides that the act shall be administered from funds appropriated to the Department of Public Instruction for fiscal

years 1985-86 and 1986-87 and shall not necessitate additional appropriations for those years.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "from five through 18" for "between the ages of five and 18" in the first sentence.

The 1985 amendment, effective July 17, 1985, substituted "from age five through age 20" for "from five through 18" near the beginning of the section.

ARTICLE 10.

Vocational Education.

Part 1. Vocational Education Programs.

§ 115C-151. Statement of purpose.

Editor's Note. —

Session Laws 1985, c. 479, s. 28, provides:

"Beginning with the plans and applications for the 1986-87 school year, the State Board of Education may not approve any local vocational education plans or applications unless:

"(1) The programs are in accordance with the purposes of G.S. 115C-151;

"(2) The vocational programs and courses are not duplicated within a local school administrative unit, unless the unit has data to justify the duplication or the unit has a plan to redirect the duplicative programs within three years;

"(3) For all current job skill programs, there is a documented need, based on labor market data or follow-up data, or there

is a plan to redirect the program within two years;

"(4) New vocational programs show documented need based on student demand, or for new job skill programs, based on student and labor market demand; and

"(5) All programs are responsive to technological advances, changing characteristics of the work force, and the academic, technical, and attitudinal development of students.

Local programs using the cooperative vocational education method shall be approved subject to students enrolled being placed in employment commensurate with the respective program criteria.

"As used in this section, 'labor market data' means data provided in the State Plan for Vocational Education, data provided through a local survey, or both."

§ 115C-156.1. State funds for vocational education — Distribution formula; allotment for disadvantaged and handicapped students.

To ensure a more balanced distribution of State and federal funds allocated for disadvantaged and handicapped students, the State Board of Education shall distribute to each of the local school administrative units the State vocational education funds that are required to match federal funds for the disadvantaged and for the handicapped, based on the following formula:

Factor	Point Value
(1) Concentration of Low Income Families	18-32
(2) Relative Financial Abilities	18-32
(3) Economically Depressed Areas	5-20
a. Designated Area Reimbursement Rate (0-6)	
b. General Unemployment (5-14)	
(4) Average Daily Membership (ADM)	4-16
Range of Points	45-100

Once the local school administrative units' total allotments are calculated, the State Board of Education shall combine each local

school administrative unit's State and federal allotments into single allotments, one for the disadvantaged and one for the handicapped. The combined allotment for the disadvantaged shall require a local match based on the local school administrative unit's ability to pay, ranging from twenty-eight percent (28%) to thirty-two (32%), as is presently the case. The combined allotment for the handicapped shall be distributed with no local matching requirements. (1985, c. 757, s. 144.)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

Part 2. Vocational Education Production Work Activities.

§ 115C-159. Statement of purpose.

It is the intent of the General Assembly that practical work experiences within the school and outside the school, which are valuable to students and which are under the supervision of a teacher, should be encouraged as a part of vocational education instruction in the public secondary schools when such experiences shall be organized and maintained to the best advantage of the vocational education programs. Such activities are a part of the instructional activities in the vocational education programs and are not to be construed as engaging in business. Such services, products, and properties generated through these instructional activities are exempt from the requirements of G.S. 115C-518; the local board shall adopt rules for the disposition of these services, products, and properties. Local boards of education are authorized to use available financial resources to support such instruction. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1983, c. 750, s. 2; 1985, c. 479, s. 32.)

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, inserted the present third sentence.

ARTICLE 11.

High School Competency Testing.

§ 115C-178. Administration of the test.

The tests shall be administered annually to all tenth grade students in the public school. Students who fail to attain the required minimum standard for graduation in the tenth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the tenth grade who are enrolled in

special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs. (1977, c. 522, s. 3; 1981, c. 423, s. 1; 1985, c. 409, s. 1.)

Effect of Amendments. — The 1985 amendment, effective June 17, 1985, and applicable to all school years beginning with the 1985-86 school year, substituted "tenth" for "eleventh" throughout this section.

ARTICLE 12.

Statewide Testing Program.

§ 115C-189. Purpose.

In order to assess the effectiveness of the educational process, and to insure that each pupil receives the maximum educational benefit from the educational process, the State Board of Education shall implement an annual statewide testing program in basic subjects. It is the intent of this testing program to help local school systems and teachers identify and correct student needs in basic skills rather than to provide a tool for comparison of individual students or to evaluate teacher performance. The statewide testing program shall be conducted each school year for the first, second, third, sixth and eighth grades. Students in these grade levels who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs. The State Board of Education shall select annually the type or types of tests to be used in the testing program. If norm-referenced tests are used in the first or second grade, the tests shall not be used as primary, definitive or exclusive criteria to make decisions with respect to grade promotion or placement in special education programs. (1977, c. 541, s. 1; 1981, c. 423, s. 1; 1983, c. 627, s. 1; 1985, c. 409, s. 2.)

Effect of Amendments. — The 1985 amendment, effective June 17, 1985, and applicable to all school years beginning with the 1985-86 school year, substituted "eighth" for "ninth" in the third sentence.

ARTICLE 14.

Driver Education.

§ 115C-215. Instruction in driver training and safety education.

CASE NOTES

The driver-training vehicle is a necessary component in driver education courses and must, therefore, be considered as a component of school instructional service rather than school transportation service. *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

§ 115C-216. Boards of education required to provide courses in operation of motor vehicles.

CASE NOTES

The driver-training vehicle is a necessary component in driver education courses and must, therefore, be considered as a component of school in-

structional service rather than school transportation service. *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

ARTICLE 15.

North Carolina School of Science and Mathematics.

§§ 115C-222 to 115C-229: Repealed by Session Laws 1985, c. 757, s. 206(a), effective July 15, 1985.

Cross References. — As to the North Carolina School of Science and Mathematics, see now § 116-230.1 et seq.

ARTICLE 17.

Supporting Services.

Part 1. Transportation.

§ 115C-250. Authority to expend funds for transportation of children with special needs.

(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115.

The Department of Human Resources and the Department of Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program.

(b) Funds appropriated for the transportation of children with special needs may be used to pay transportation safety assistants employed in accordance with the provisions of G.S. 115C-245(e) for

buses to which children with special needs are assigned. (1955, c. 1372, art. 21, s. 6; 1973, c. 1351, s. 1; 1975, c. 678, ss. 9, 10; 1977, c. 830, s. 1; 1979, c. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s. 1; c. 912, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 31; 1985, c. 479, s. 26(b).)

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, substituted "transportation of handicapped children with special needs

who are unable because of their handicap to ride the regular school buses and" for "transportation of children with special needs" in the first and second paragraphs of subsection (a) and substituted "transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses" for "transportation of the child" in the third paragraph of subsection (a).

SUBCHAPTER V. PERSONNEL.

ARTICLE 18.

Superintendents.

§ 115C-271. Selection by local board of education, term of office.

At a meeting to be held biennially or quadrennially during the month of April, the various county boards of education shall meet and elect a county superintendent of schools. Such superintendent shall take office on the following July 1 and shall serve for a term of two or four years, or until his successor is elected and qualified. The superintendent shall be elected for a term of either two or four years, which term shall be in the discretion of the county board of education. The county board of education may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract at any time during the final year of his term. Provided, however, in any year when new members are to be elected or appointed, the board may not act until after the new members have been sworn in. The term and conditions of employment shall be stated in a written contract which shall be entered into between the board of education and the superintendent. A copy of the contract shall be filed with the Superintendent of Public Instruction before any person is eligible for this office.

It is the policy of the State of North Carolina that the superintendents of each of the several school administrative units be hired solely at the discretion of the local boards of education and that a candidate for superintendent of a local school administrative unit must have been, at least, a principal in a North Carolina public school or have equivalent experience as prescribed by the State Board of Education and have other minimum credentials, educational prerequisites and experience requirements as the State Board of Education shall prescribe. The State Board of Education is directed to promulgate prerequisites for candidacy for superintendent not later than January 1, 1985.

If any board of education shall elect a person to serve as superintendent of schools in any local school administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The city board of education may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract at any time during the final year of his term: Provided, however, in any year when new members are to be elected or appointed, the board may not act until after the new members have been sworn in. The election shall be held biennially or quadrennially, as the case may be, during the month of April. (1981, c. 423, s. 1; 1983, c. 478; 1983 (Reg. Sess., 1984), c. 1103, s. 3.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Elementary and Second School Reform Act of 1984'."

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 5, provides:

"The State Board of Education shall develop and recommend to the General Assembly by March 1, 1986, a quality assurance program for all administrators, similar to the programs for beginning and experienced teachers, in order to provide principals and superintendents with opportunities to develop effective management skills. In the development of this recommendation, the State Board of Education shall consult with local boards of education, on a continuous and systematic basis, through a process designed by the State Board, to assure participation on the part of a

number of local boards of various sizes throughout the State. In addition, the State Board shall consult with and/or employ such public and private agencies, organizations and professional organizations as it deems necessary to accomplish this policy."

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added the language beginning "and that a candidate for superintendent" at the end of the first sentence of the second paragraph, inserted the present second sentence of the second paragraph, and deleted a former second sentence of the second paragraph, which read "However, a candidate for superintendent of a local school administrative unit must meet the minimum educational and experience requirements established by the State Board of Education."

CASE NOTES

Superintendent and Principal Agents of Board. — By statute and under traditional common-law principles the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions,

based on the recommendations of its agents, by simply refusing to inquire into their agents' reasons. *Nash v. County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

§ 115C-272. Residence, oath of office, and salary of superintendent.

(b) Superintendents shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All superintendents employed by any local

school administrative unit or school district who are paid from local funds shall be paid promptly as provided by law and as State allotted superintendents are paid. Superintendents paid from State funds shall be paid as follows:

- (1) Salary payments to superintendents made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to superintendents made through a local payroll system may be made monthly on the basis of each calendar month of service or on the statewide payroll date for superintendents, at the discretion of the local board. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees. Included within the 12 months' employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.
- (2) 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: Provided, that superintendents 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 superintendent 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 superintendent will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.
- (3) Each local board of education shall sustain any loss by reason of an overpayment to any superintendent paid from State funds.
- (4) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(1955, c. 1372, art. 6, s. 1; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 946, s. 1; 1983, c. 872, s. 1; 1985, c. 757, s. 145(c).)

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

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, substituted the present first and

second sentences of subdivision (b)(1) for a former first sentence, which read "The salaries of superintendents shall be paid monthly on the basis of each calendar month of service."

§ 115C-276. Duties of superintendent.

CASE NOTES

Superintendent and Principal Agents of Board. — By statute and under traditional common-law principles the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions,

based on the recommendations of its agents, by simply refusing to inquire into their agents' reasons. *Nash v. County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

ARTICLE 19.

Principals and Supervisors.

§ 115C-284. Method of selection and requirements.

(d1) It is the policy of the State of North Carolina that, subsequent to the adoption of a system of classroom teacher differentiation and prerequisites to candidacy for principal, a classroom teacher must have attained at least the second level of differentiation, have at least four years of classroom teaching experience, and possess, at least, a Masters Degree in Education Administration. This subsection shall not apply to educational personnel certified as of July 1, 1984.

(1955, c. 1372, art. 5, ss. 4, 27; art. 6, s. 6; art. 18, ss. 1-4; 1963, c. 688, s. 3; 1965, c. 584, ss. 6, 20.1; 1969, c. 539; 1971, c. 1188, s. 1; 1973, cc. 236, 733; c. 770, ss. 1, 2; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 4.)

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

Cross References. — As to a career development pilot program, see § 115C-363 et seq.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Elementary and Secondary School Reform Act of 1984'."

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 5, provides: "The State Board of Education shall develop and recom-

mend to the General Assembly by March 1, 1986, a quality assurance program for all administrators, similar to the programs for beginning and experienced teachers, in order to provide principals and superintendents with opportunities to develop effective management skills. In the development of this recommendation, the State Board of Education shall consult with local boards of education, on a continuous and systematic basis, through a process designed by the State Board, to assure participation on the part of a number of local boards of

various sizes throughout the State. In addition, the State Board shall consult with and/or employ such public and private agencies, organizations and professional organizations as it deems necessary to accomplish this policy."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added subsection (d1).

CASE NOTES

Superintendent and Principal Agents of Board. — By statute and under traditional common-law principles the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions,

based on the recommendations of its agents, by simply refusing to inquire into their agents' reasons. *Nash v. County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

§ 115C-285. Salary.

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school 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 principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

- (1) Classified principals and state-allotted supervisors shall be employed for a term of 12 calendar months. Salary payments to classified principals and state-allotted supervisors made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to classified principals and state-allotted supervisors made through a local payroll system may be made monthly at the end of each calendar month of service or on the statewide payroll date for such employees, at the discretion of the local board. They shall earn annual vacation leave at the same rate provided for State employees. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at the time agreed upon by the employee and his immediate supervisor. They shall be provided by the board the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.
- (2) Supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until December 31 of each year. On December 31 of each year, any supervisor or principals 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. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. 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 (5) of this section.
- (4) Each local board of education shall sustain any loss by reason of an overpayment to any principal or supervisor paid from State funds.
- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) The State Board of Education, in fixing the State standard salary schedule of principals as authorized by law, shall provide that principals who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.
- (7) All persons employed as principals in the schools and institutions listed in subsection (p) of G.S. 115C-325 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education.

(1955, c. 1372, art. 5, s. 32; art. 6, s. 13; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, c. 383; c. 437, s. 9; c. 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 4; c. 946, s. 2; 1983, c. 872, s. 2; 1985, c. 757, s. 145(d).)

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

Editor's Note. —

Subsection (p) of § 115C-325, referred to in subdivision (a)(7), was repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 34.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, substituted the present first three sentences of subdivision (a)(1) for a former first sentence, which read "Classified principals and 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."

§ 115C-286. Rules for conduct of principals and supervisors.

CASE NOTES

Superintendent and Principal Agents of Board. — By statute and under traditional common-law principles the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions,

based on the recommendations of its agents, by simply refusing to inquire into their agents' reasons. *Nash v. County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

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

CASE NOTES

Superintendent and Principal Agents of Board. — By statute and under traditional common-law principles the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions,

based on the recommendations of its agents, by simply refusing to inquire into their agents' reasons. *Nash v. County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

ARTICLE 20.

Teachers.

§ 115C-295. Minimum age and certificate prerequisites.

Cross References. — As to a career development pilot program, see § 115C-363 et seq.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 7, provides: "The State Board of Education may recommend to the General Assembly a program of expanded on-the-job training for

public school employees. This recommendation may include individual training goals, the level of funding and a mechanism to evaluate the results of the training efforts." Section 1 of c. 1103 provides that the act may be referred to as the "Elementary and Secondary School Reform Act of 1984."

§ 115C-296. Board sets certification requirements.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certifi-

cates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than November 1, 1984, a plan to promote this policy. The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs.

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 6.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Elementary and Secondary School Reform Act of 1984'."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, designated the first paragraph as subsection (a) and added subsections (b) and (c).

§ 115C-299. Hiring of teachers.

CASE NOTES

Cited in *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

§ 115C-301. Allocation of teachers; class size.

(d) Local boards of education shall maintain unit-wide average class sizes no higher than the average allotment ratio of teachers to students in each grade span funded by the General Assembly for each school year. At no time may the General Assembly appropriate funds for higher unit-wide class averages than those for which State funds were provided during the 1984-85 school year. No single class may have more than three students more than the unit-wide average class size applicable to that grade level; however, the State Board of Education may set alternate class sizes in selected areas such as typewriting, music, and physical education so long as the effectiveness of the instructional program in these areas is not impaired. The maximum equivalent daily student load for teachers in grades 7 through 12 is 150.

The State Board may not permit temporary waivers from the unit-wide average class sizes, the maximum class sizes for each class, and the maximum daily loads for teachers set out in this section except under exceptional circumstances, where there are large fluctuations in student population and the situation cannot be handled within funds appropriated to accommodate changes in average daily membership. The situation requiring the waiver should be alleviated within 60 days. All waivers permitted under this paragraph shall be reported to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by June 1 of each year.

The State Board shall adopt rules to implement this subsection.

(1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, ss. 12, 13; 1985, c. 479, s. 55(b)(3)b.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 11, provides:

"The funds to reduce class size appropriated to the Department of Public Education in Section 2 of Chapter 971, Session Laws of 1983, shall be used to reduce the allocation formula for grades 4 through 6 from one teacher for every 30 students in average daily membership to one teacher for every 26 students in average daily membership. These funds shall not be used for administrative purposes or for any purpose except to provide additional teachers to reduce class size for grades 4 through 6 as provided in this section.

Each local board of education shall organize the schools and assign teachers so that the average ratio of teachers to students in each of the grades 4 through 6 in its local school administrative unit is no more than one to 26. At all times during the school year and the school day, the local board shall assure that the number of students assigned to each class and the number being taught on a regular basis in each class are such that this average ratio is not exceeded."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 and Session Laws 1985, c. 479, s. 230 are severability clauses.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 55(b)(3)a provides:

"Of the funds appropriated to the Department of Public Education in Section 2 of this act, the sum of thirty-two million nine hundred thirty-six thousand seven hundred seventy-three dollars (\$32,936,773) for fiscal year 1985-86 and the sum of thirty-one million six hundred ninety-one thousand seven hundred ninety-four dollars (\$31,691,794) for fiscal year 1986-87 shall be used to reduce class size to a unit-wide ratio of one teacher for every 26 students in average daily membership in grades 7 and 8 and one teacher for every 27 students in grade 9. To the extent that projections of average daily membership and aver-

age salaries exceed actual requirements, the State Board of Education may expend funds to reduce the ratio of one teacher for every 27 students in grade 9 to one teacher for every 26 students."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted present subdivisions (d)(2) and (d)(2a) for former subdivision (d)(2), which read "No more than 33 students per teacher in average daily membership for the upper elementary grades," and added the last two sentences of subsection (d).

The 1985 amendment, effective July 1, 1985, and applicable to all school years beginning with the 1985-86 school year, rewrote subsection (d).

§ 115C-302. Salary and vacation.

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

Teachers paid State funds shall be paid as follows:

(1) **Academic Teachers.** — Regular state-allotted teachers shall be employed for a period of 10 calendar months. Salary payments to regular state-allotted teachers made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to regular state-allotted teachers made through a local payroll system may be made monthly at the end of each calendar month of service or on the statewide payroll date for such employees, at the discretion of the local board: Provided, that any individual teacher may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said local school administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar months employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment; which shall be provided by each local board of education at a time when students are not scheduled to be in regular attendance. Included within the 10 calendar months employment each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those desig-

nated by the State Personnel Commission for State employees; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, a teacher may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Within policy adopted by the State Board of Education, each local board of education shall develop rules and regulations designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of state-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. Local boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule.

- (2) Occupational Education Teachers. — State-allotted months of employment to local boards of education as provided by the State Board of Education shall be used for the employment of teachers of occupational education for a term of employment as determined by the local boards of education. Salary payments to these occupational education teachers made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to these occupational education teachers made through a local payroll system may be made monthly at the end of each calendar month of service or on the statewide payroll date for these employees, at the discretion of the local board: Provided, that local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter: Provided, that any individual teacher employed for a term of 10 calendar months may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total workdays for a 10-month employee exceed 200 days in a 10-month schedule and the workweek shall constitute five days for all occupational teachers regardless of the employment period.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State

meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education.

- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual vacation leave earned by a teacher during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Teachers 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 teachers 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 teacher will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.
- (4) Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.
- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(b) Repealed by Session Laws 1985, c. 791, s. 5(c), effective June 30, 1984.

(e) It is the policy of the State of North Carolina to enhance the teaching profession by providing teachers with career opportunities that do not remove them from the classroom; to encourage the development and implementation of a professional salary schedule that complements the system of differentiation; to have salaries of professional educators in elementary and secondary schools based upon performance, degree attained, differentiation and the needs of the local school administrative unit; and to begin, in the school year beginning in 1986, a differential salary system based upon performance, differentiation, local availability of classroom teachers, geographical location of the employing local school administrative unit and such other factors as the local board of education shall deem necessary.

Performance shall be measured by standardized evaluations which are routinely administered pursuant to G.S. 115C-326 by competent and trained administrators who have themselves demonstrated meritorious performance in the classroom. Differentiation shall be based upon superior performance over a period of time plus other responsibilities. Needs of the local school administrative unit over and above the standard course of study shall be defined by the local board of education exclusively funded from revenues provided at the discretion of the board of county commissioners or from other local funds under the control of the local board of education.

Each salary may include a local variable component, determined locally and based upon the needs and condition of the local school administrative unit. This local variable component shall be paid from local revenue. (1955, c. 1372, art. 5, s. 32; art. 17, s. 9; art. 18, ss. 6, 7; 1961, c. 1085; 1965, c. 584, ss. 3, 16; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 1; c. 947, s. 1; 1983, c. 761, s. 90; c. 768, s. 9; c. 872, ss. 3, 4; 1983 (Reg. Sess., 1984), c. 1103, s. 8; 1985, c. 757, s. 145(e), (f); c. 791, s. 5(c).)

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

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Elementary and Secondary School Reform Act of 1984'."

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added subsection (e).

The 1985 amendment by c. 757, s. 145(e) and (f), effective July 1, 1985, in subdivision (a)(1) deleted "and shall be paid monthly at the end of each calendar month of service" at the end of the present first sentence, inserted the present second and third sentences, and placed the proviso which formerly appeared at the end of the first sentence at the end of the present third sentence, and in subdivision (a)(2) substituted

"months of employment" for "man-months of service" near the beginning of the first sentence, deleted "and teachers so employed shall be paid on a calendar-month basis at the end of each calendar month of service for the term of their employment" at the end of the first sentence, inserted the present second and third sentences, and moved the two provisos which formerly appeared at the end of the first sentence to the end of the third sentence.

The 1985 amendment by c. 791, s. 5(c), effective retroactive to June 30, 1984, deleted subsection (b), which read "All persons employed as teachers in the schools and institutions listed in subsection (p) of G.S. 115C-325 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education."

§ 115C-307. Duties of teachers.

(c) To Provide Some Medical Care to Students. — It is within the scope of duty of teachers, including substitute teachers, teacher 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 life saving techniques in which the employee has been trained in a program approved by the State Board of Education: Provided, that no one shall be required to administer drugs or medication or attend life saving techniques programs.

Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any such authorized act or for any omission relating to such act unless such act or omission amounts to gross negligence, wanton conduct or intentional wrongdoing. Any person, serving in a voluntary position at the request of or with the permission or consent of the board of education or its designee, who has been given the authority by the board of education or its designee to act under (ii) above shall not be liable in civil damages for any such authorized act or for any omission relating to such act unless the act amounts to gross negligence, wanton conduct or intentional wrongdoing.

At the commencement of each school year, but prior to the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program.

(f) To Discourage Nonattendance. — Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the school social worker in accordance with rules promulgated by the State Board of Education.

(1955, c. 1372, art. 17, ss. 4, 6; 1959, cc. 1016, 1294; 1969, c. 638, ss. 2, 3; 1971, c. 434; 1981, c. 423, s. 1; 1985, c. 642; c. 686, s. 2.)

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

Effect of Amendments. — The 1985 amendment by c. 642, effective July 8, 1985, and applicable only to acts and omissions committed on and after that date, inserted the present second paragraph of subsection (c).

The 1985 amendment by c. 686, s. 2, effective July 11, 1985, and applicable only to school years beginning with the 1985-86 school year, substituted "school social worker" for "attendance worker" in subsection (f).

CASE NOTES

The regulations prescribing, etc. — Teachers who are entrusted with the care of small children and adolescents are intended by parents, citizenry, and lawmakers alike to serve as good exam-

ples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.

Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

Applied in Faulkner v. New Bern-

Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983); Crump v. Durham County Bd. of Educ., — N.C. App. —, 327 S.E.2d 599 (1985).

ARTICLE 21.

Other Employees.

§ 115C-315. Hiring of school personnel.

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

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

(1955, c. 1372, art. 5, s. 4; art. 18, ss. 1-4; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 9.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Ele-

mentary and Secondary School Reform Act of 1984'."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added the second paragraph of subsection (b).

§ 115C-316. Salary and vacation.

(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit 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:

- (1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. — Salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to these employees made

through a local payroll system may be made monthly at the end of each calendar month of service or on the statewide payroll date for these employees, at the discretion of the local board. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

- (2) **School Employees Paid on an Hourly or Other Basis.** — Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2), and 115C-316(a)(1) made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to these employees made through a local payroll system may be made at a time determined by each local board of education or may be made monthly on the statewide payroll date for these employees, at the discretion of the local board. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that any individual school employee employed for a term of 10 calendar months may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of

employment as those designated by the State Personnel Commission for State employees.

- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten- or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until December 31 of each year. On December 31 of each year, any of these employees 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 these employees will be upon the authorization of their immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until 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. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The

State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(1955, c. 1372, art. 5, s. 32; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, ss. 2, 3; c. 730, s. 1; c. 946, s. 3; c. 947, s. 2; 1983, c. 872, ss. 5-7; 1985, c. 757, s. 145(g), (h).)

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

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, substituted the present first and second sentence of subdivision (a)(1) for a former first sentence, which read "The salaries of employees other than superintendents, supervisors and classified principals employed on an annual basis shall be paid monthly on the basis of each calendar month of service," and in subdivision (a)(2) substituted the first three sentences for a former first sen-

tence which read "School employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2) and 115C-316(a)(1) shall be paid at a time determined by each local board of education and expenditures from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds," and moved a proviso which was formerly at the end of the first sentence to the end of the present third sentence.

§ 115C-318. Liability insurance for nonteaching public school personnel.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 73, provides:

"Funds to be used for the purpose set out in Section 3 of Chapter 1399 of the

1981 Session Laws shall be allocated to local school administrative units based on the number of State-allotted personnel covered."

ARTICLE 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(p) Section Applicable to Certain Institutions. — Notwithstand-

ing any law or regulation to the contrary and the teachers' salary schedule as adopted by the State Board of Education, this section shall apply to all persons defined as teachers by this section who serve as teachers in the schools and institutions of the Departments of Human Resources and Correction. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b).)

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

Pilot Program Applicable to Local School Administrative Units with More Than 70,000 Students. —

Session Laws 1985, c. 334 amends certain provisions of Session Laws 1983, c. 394, as set out in the bound volume under this section.

As amended by Session Laws 1985, c. 334, s. 1, section 2 of Session Laws 1983, c. 394 now provides: "Sec. 2. Section 1 of this act shall apply only to teachers first employed as probationary teachers for teaching in such units after the 1983-84 school year. This act shall be a pilot program for said administrative units."

Session Laws 1985, c. 334, s. 2 replaces ss. 5 and 6 of Session Laws 1983, c. 394 with ss. 5, 5.1 and 6, which now read as follows:

"Sec. 5. Nothing herein shall be deemed to amend or repeal the existing provisions of G.S. 115C-325(c)(1) as it applies to local school administrative units other than the Charlotte-Mecklenburg County local school administrative unit.

"Sec. 5.1. This act shall apply only to the Charlotte-Mecklenburg County local school administrative unit.

"Sec. 6. This act is effective upon ratification. Unless action is taken by the General Assembly by July 1, 1987, to reenact or modify the provisions of this act, this act shall expire on July 1, 1987."

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, deleted a former subsection (p), which made this section applicable to certain institutions.

The 1985 amendment by c. 791, s. 5(a), effective July 1, 1984, added subsection (p), to read substantially the same as the former subsection (p) repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 34, effective July 1, 1984.

The 1985 amendment by c. 791, s. 5(b), effective July 1, 1985, rewrote subsection (p).

CASE NOTES

Subdivision (e)(1) Not Void for Vagueness. — Subdivision (e)(1), which authorizes the dismissal of a career teacher for "inadequate performance," is not unconstitutionally void for vagueness. The term "inadequate performance" in regard to a job can be readily understood by any person of ordinary intelligence who knows what the job entails. *Crump v. Durham County Bd. of Educ.*, — N.C. App. —, 327 S.E.2d 599 (1985).

The manifest purpose of this section, etc. —

In accord with original. See *Bennett v. Hertford County Bd. of Educ.*, 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

In balancing teacher's free-speech interest and employer's administrative interest, the concern was weighing the degree of public interest in the particular expression by the teacher against the degree to which her conduct was justifiably viewed by a superintendent acting on behalf of the Board of Education, as an actual or potential disruption of the operations for which the board is re-

sponsible. Stated generally, the factors to be taken into consideration include: whether the employee's personal employment situation is substantially involved in the subject matter of his speech; whether the employee's speech would tend to harm the professional reputation of its target; whether the employee's speech would tend to undermine working relationships essential of the efficient operation of the governmental activity involved; and whether the personnel actions being challenged would tend to chill the employee's exercise of his free-speech rights. *Gregory v. Durham County Bd. of Educ.*, 591 F. Supp. 145 (M.D.N.C. 1984).

School board may refuse to renew probationary teacher's contract upon recommendation of the superintendent. That recommendation is only advisory, however; ultimate responsibility rests with the board. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

Subdivision (m)(2) imposes duty on boards of education to determine substantive basis for recommendations of nonrenewal and to assure that nonrenewal is not for a prohibited reason. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

The Legislature intended to afford probationary teachers minimum protection against the arbitrary nonrenewal permitted under the common law. The discretion of the boards with respect to probationary teachers remains very broad, of course, but the decision not to renew must have some nonarbitrary basis. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

The advisory nature of the superintendent's recommendation to not rehire a nontenured teacher places the responsibility on the board to ascertain the rational basis for the recommendation before acting upon it. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

Formal order is not required to be prepared each time Board of Education decides not to renew probationary teacher's contract, but the board's records should reflect the specific substantive reason for the nonrenewal of his contract. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

The regulations prescribing, etc. —

Teachers who are entrusted with the care of small children and adolescents are intended by parents, citizenry, and

lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil. *Faulkner v. New Bern-Craven County Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

Grounds for Dismissal or Demotion — Habitual Use of Alcohol. — Evidence that teacher, during the 1980-81 school year, consumed some form of alcoholic beverages at school, or had had the odor of alcohol on his breath at school during instructional hours, and during the school day on occasions during the 1981-1982 school year, and after reprimand and warning against the same, had consumed alcoholic beverages, or had had the odor of alcohol on his breath, showed conduct which, when ascribed to a career teacher in North Carolina, constituted "habitual or excessive use of alcohol" within the meaning and intent of this section, becoming thereby lawful grounds for dismissal. *Faulkner v. New Bern-Craven County Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

County board of education was entirely proper in concluding that a course of conduct involving the use of alcohol by a teacher on school property during school hours, the same being obvious to his students and other school personnel and parents, repeated after continued warnings, was "excessive" within the meaning of this section, and having properly found this course of conduct to exist, the board acted lawfully in exercising its authority to dismiss this teacher. *Faulkner v. New Bern-Craven County Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

Same — Physical Incapacity. — Physical incapacity under this section refers to a present and continuing inability to perform the duties and meet the responsibilities and physical demands customarily associated with the individual's job as a career teacher in the public schools. The incapacity must be in effect at the time action is taken by the board of education. The projected duration of the incapacity must be long term or indefinite with no reasonable prospect for rapid rehabilitation. *Bennett v. Hertford County Bd. of Educ.*, 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

While physical incapacity may adversely affect a teacher's job perfor-

mance, the concepts are nevertheless independent and it does not necessarily follow, that poor performance will always accompany less than perfect health. *Bennett v. Hertford County Bd. of Educ.*, 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

Evidence of Events More Than Three Years, etc. —

Although a personnel file may be consulted with regard to disciplinary matters, information in it regarding conduct occurring more than three years prior may not serve as a basis for a dismissal or demotion but only as background for such action. *Gregory v. Durham County Bd. of Educ.*, 591 F. Supp. 145 (M.D.N.C. 1984).

Scope of Judicial Review. —

The standards for judicial review set forth in § 150A-51 are applicable to appeals from school boards to the courts, since no other statute provides guidance for judicial review of school board decisions and in the interest of uniformity in reviewing administrative board decisions. *Faulkner v. New Bern-Craven County Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

Applied in *Davidson v. Winston-Salem/Forsyth County Bd. of Educ.*, 62 N.C. App. 489, 303 S.E.2d 202 (1983); *Faulkner v. New Bern-Craven County Bd. of Educ.*, 65 N.C. App. 483, 309 S.E.2d 548 (1983); *Nestler v. Chapel Hill/Carrboro City Schools Bd. of Educ.*, 66 N.C. App. 232, 311 S.E.2d 57 (1984); *Goodwin v. Goldsboro City Bd. of Educ.*, 67 N.C. App. 243, 312 S.E.2d 892 (1984).

§ 115C-326. Performance standards and criteria for professional employees; law suits arising out of this section.

(c) The State Board of Education shall recommend to the General Assembly by December 1, 1986, a program to remedy deficiencies and difficulties revealed through the evaluation process required by this section and to develop new skills on the part of classroom teachers. (1979, 2nd Sess., c. 1137, s. 35; 1981, c. 423, s. 1; c. 859, s. 29.12; 1981 (Reg. Sess., 1982), c. 1282, s. 32.1; 1983 (Reg. Sess., 1984), c. 1103, s. 10.)

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

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be

referred to as the 'Elementary and Secondary School Reform Act of 1984'."

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added subsection (c).

§ 115C-326.1: Repealed by Session Laws 1985, c. 479, s. 52, effective July 1, 1985.

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Repealed § 115C-326.1 was enacted by Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 11.

ARTICLE 24.

Interstate Agreement on Qualifications of Educational Personnel.

§§ 115C-359 to 115C-361: Reserved for future codification purposes.

ARTICLE 24A.

*Certified Personnel Evaluation Pilot Program.***§ 115C-362. Certified School Personnel Evaluation Pilot Program.**

The State Board of Education shall develop and implement a certified school personnel evaluation pilot program. In this program, certified school personnel shall be evaluated by outside evaluators. Teachers shall be evaluated using the Performance and Appraisal Instrument and Process System developed by the State Board of Education. The State Board of Education shall develop a separate Performance and Appraisal Instrument and Process to evaluate principals and assistant principals. Each employee shall be given the results of his evaluation and shall be encouraged to use the results to improve the way he does his job.

Nine local school administrative units shall be selected by the State Board to participate in the pilot program from units that volunteer to participate. Units that do not wish to participate shall not be compelled to do so. In three units, all of the principals and assistant principals shall be evaluated, in three units, all of the teachers shall be evaluated, and in three units, all of the principals, assistant principals, and teachers shall be evaluated. The evaluators shall be selected and trained by the State Board of Education.

Program planning shall take place from July 1, 1985, through June 30, 1986. Program implementation shall take place from July 1, 1986, through June 30, 1990.

The State Board shall report on the implementation of the pilot program by February 1 of each year to the President of the Senate, the Speaker of the House of Representatives, the Fiscal Research Division, the chairmen of the Appropriations Base Budget, Appropriations Expansion Budget, Ways and Means, Appropriations Base Budget on Education, and Education Committees in the Senate, and the chairmen of the Appropriations Base Budget, Appropriations Expansion Budget, Appropriations Base Budget on Education, Appropriations Expansion Budget on Education and Education Committees in the House of Representatives. The report for the first year shall indicate which local school administrative units have volunteered and been selected to participate in the program, which employees will be evaluated in each of those units, and the projected cost of implementing the program in each of those units in ensuing years. (1985, c. 479, s. 38.)

Editor's Note. — Session Laws 1985, c. 479, s. 231 provides: "Except as otherwise provided, this act shall become effective July 1, 1985.

Session Laws 1985, c. 479, s. 230 is a severability clause.

ARTICLE 24B.

Career Development Pilot Program.

§ 115C-363. Purpose and policy.

The General Assembly finds that it is essential to attract and retain the best people in teaching and in school administration. A system that is perceived to offer low wages, lifetime contracts, little real evaluation and no extra pay for outstanding performance cannot do that; therefore, it is the policy of the State of North Carolina to provide an adequate base salary for and to encourage differentiation of all teachers and school administrators.

In furtherance of this policy, the General Assembly hereby establishes a career development pilot program. This pilot program shall remain in operation through the 1988-89 school year so as to enable the State Board and the General Assembly to analyze all facets of a career development plan prior to statewide implementation. It is the intent of the General Assembly that this pilot program act as a means of developing a career ladder plan that could be implemented on a statewide basis in the future.

It is not the intent of the General Assembly that this Article be construed to prohibit or discourage a career development program for noncertificated employees of the public schools. (1985, c. 479, s. 40.)

Editor's Note. — Session Laws 1985, c. 479, s. 231 provides: "Except as otherwise provided, this act shall become effective July 1, 1985.

Session Laws 1985, c. 479, s. 230 is a severability clause.

§ 115C-363.1. Development and implementation of Plan by State Board.

(a) The State Board of Education shall continue to develop, test, modify, and implement in a four-year pilot program, a Career Development Plan. The Plan shall cover instructional personnel, instructional support personnel, and administrators who require certification by the State Board as a condition of employment. The Plan implemented by the State Board shall be the plan submitted by the State Board to the General Assembly in compliance with Chapter 971 of the 1983 Session Laws (Regular Session 1984), modified only as necessary to conform with the provisions of this act. The Plan shall be implemented in the 16 local school administrative units selected by the State Board of Education in 1984-85.

(b) The State Board shall consult with local boards of various sizes throughout the State on a continuous and systematic basis on the continuing development, testing in pilot programs, modification and implementation of the Plan. The State Board shall also consult with any other public and private agencies, organizations, and professional associations it deems necessary.

(c) The State Board may adopt rules necessary to carry out the provisions of this Article. (1985, c. 479, s. 41.)

§ 115C-363.2. Elements of the Plan.

(a) The Plan shall be designed to improve the quality of classroom instruction, to increase the attractiveness of teaching, and to encourage the recognition and retention of high quality teachers.

(b) The Plan shall be based on continuous, comprehensive evaluation of teacher performance as indicated by multiple sources of information. Classroom performance shall be a significant part of the evaluation process and evaluation shall be based on indicators associated with effective classroom practices and other criteria.

(c) The Plan shall, based on experience derived from pilot units, include at the appropriate time personnel policies that will result in an appropriate number of employees being placed in each level of differentiation in each local school administrative unit. This does not mean that there should be arbitrary caps or quotas. If, however, there is evidence that a local school administrative unit is improperly placing employees at each level or is improperly evaluating employees pursuant to G.S. 115C-326, the State Board shall study the staffing pattern and the performance evaluations for that unit.

(d) The Plan shall specify a process for administration, periodic review, and evaluation. The criteria and procedures for advancement under the Plan shall be made public, and instruction shall be provided for teachers about these criteria and procedures prior to the implementation of the process.

(e) The Plan shall provide for a teacher to move to a lower level either by individual choice or based on unacceptable performance review. It shall contain an appeal process that provides prompt and impartial review.

(f) The Plan for instructional personnel and instructional support personnel shall be designed to give an employee increasing responsibility, recognition, and pay as the employee gains experience and professional ability. Levels of differentiation shall be based on an employee's initiative and desire to increase the employee's professional abilities and the individual's success in doing so. It shall provide for annual methods of evaluation using practicing educators, opportunities to correct deficiencies, and dismissal of employees who after ample opportunities cannot or will not perform.

(g) The Plan for administrators shall be designed to give each employee clear opportunities for advancement, recognition, and increased pay if the employee demonstrates high effectiveness as an instructional leader or school manager. Levels of differentiation shall be based on the employee's initiative and desire to increase the employee's professional abilities and the employee's success in doing so. The Plan for administrators shall include methods and instruments of evaluation that will determine what level of performance, effort, and ability and what accomplishments warrant different salary classifications, and at what point dismissal or reassignment of an administrator is warranted.

The Plan for administrators shall be the same as the Plan for instructional personnel and instructional support personnel except that the evaluation shall be the responsibility of the local superintendent or the superintendent's designee. However, trained evaluators shall assist the superintendent or the superintendent's

designee with the evaluations. The salary differentiation steps for administrators shall track the salary differentiation steps for teachers as defined in this Article. (1985, c. 479, s. 42.)

§ 115C-363.3. Levels of differentiation, salary, and evaluation requirements.

(a) During the first and second years of employment, the employee shall be assigned "initial status" and shall be paid in accordance with the State base salary schedule. A mentor or a support team shall be assigned to the employee for assistance and professional development. The employee shall be formally evaluated at least twice each year by the principal or the principal's designee and at least twice each year by a trained evaluator.

(b) During the third year of employment, the employee who is fully certified shall be assigned "provisional status" and shall be paid on the State base salary schedule. The employee shall be formally evaluated at least twice by the principal or the principal's designee and at least twice by a trained evaluator.

If the employee has completed at least 30 hours of effective teacher training as provided in G.S. 115C-363.7 and if the employee's evaluations have been satisfactory, the principal shall recommend to the superintendent, and the superintendent shall review the evaluations and recommend to the board, the employee for reemployment in Career Status I at the end of the provisional year. If the employee has not completed the training or if the employee's evaluations have not been satisfactory, the principal shall recommend the employee for contract termination.

A "career teacher", as defined in G.S. 115C-325, not recommended for Career Status I may request a review by a three-member appeals panel chosen from a roster of trained evaluators. One member of the panel shall be chosen by the principal and approved by the superintendent, one shall be chosen by the employee, and one shall be chosen jointly by the principal and employee. The panel shall report its findings to the employing local board of education and the local board shall take final action on the matter.

(c) An employee shall have "Career Status I" if the employee was recommended for Career Status I as provided in subsection (b) of this section and the employee is reemployed by a local board of education. An employee in Career Status I is a "career teacher" as defined in G.S. 115C-325. The employee shall receive a salary of one step over the State base salary that would otherwise have applied to him. The employee shall be formally evaluated at least once a year by the principal or the principal's designee and may also be evaluated by a trained evaluator if the principal deems it appropriate and if a trained evaluator is available.

No earlier than the third year in Career Status I, an employee may apply for Career Status II. During the year the employee applies, the employee shall be evaluated at least twice by the principal and at least twice by a trained evaluator. The employee shall also prepare during that year and submit a portfolio that includes the employee's attendance records, indicators of professional growth, any unique assignments or leadership roles, valid certification, acceptable ratings on recent evaluations, additional duties and responsibilities and the time they required, the employee's relationship with the employee's peers and with parents, and the

employee's years of experience. If the employee's evaluations have been well above standard or superior as defined in the performance appraisal system, the principal may, on the basis of the evaluations, the portfolio, and any interview, recommend to the superintendent, and the superintendent shall review the evaluation information and recommend to the local board, the employee for promotion to Career Status II. If the employee is not recommended for promotion to Career Status II, the employee shall remain in Career Status I.

An employee not recommended for Career Status II may request a review by a three-member appeals panel chosen from a roster of trained evaluators. One member of the panel shall be chosen by the principal and approved by the superintendent, one shall be chosen by the employee, and one shall be chosen jointly by the principal and employee. The panel shall report its findings to the employing local board of education and the local board shall take final action on the matter.

(d) An employee shall have "Career Status II" if the employee is recommended for promotion to Career Status II as provided in subsection (c) of this section and the employee is granted that status by the local board. The employee shall receive a salary of two steps over the State base salary that would otherwise have applied to him. The employee shall be formally evaluated at least once by the principal or the principal's designee during the year the employee is granted this status. Subsequently, the employee shall be formally evaluated once every two years by the principal or the principal's designee and may be evaluated more frequently, in the discretion of the principal.

A Career Status II employee whose evaluation indicates that the employee is not maintaining well above standard or superior performance shall be formally evaluated at least twice by the principal or the principal's designee and at least twice by a trained evaluator during the next year. If these additional evaluations indicate the employee is not maintaining well above standard or superior performance, the principal shall recommend that the employee be reclassified to Career Status I. If the employee is reclassified, the employee may receive only the salary appropriate for a teacher in Career Status I.

A Career Status II employee may move voluntarily to Career Status I. A Career Status II employee recommended for reclassification may request a review of the decision by a three-member appeals panel chosen from a roster of trained evaluators. One member of the panel shall be chosen by the principal and approved by the superintendent, one shall be chosen by the employee, and one shall be chosen jointly by the principal and employee. The panel shall report its findings to the employing local board of education and the local board shall take final action on the matter. An involuntary reclassification may not be considered a demotion for the purposes of G.S. 115C-325. (1985, c. 479, s. 43.)

§ 115C-363.4. Additional duties for Career Status II teachers.

A Career Status II teacher may apply for additional responsibilities during the 10-month school year. Responsibilities for which the employee may apply and be selected shall be based on the needs of the local school administrative unit and may include being a mentor teacher, supervising student teachers, curriculum development, being a staff development leader/coordinator, and serving as department chairman or grade chairman. An employee shall receive an additional one-half percent of the employee's annual salary for each month during which the employee performs each additional responsibility.

A Career Status II teacher may also apply for employment during the summer in teaching, curriculum development, and staff development. The employee's salary and benefits during the summer shall be at the same rate as the employee's base salary during the previous 10-month school year.

Local units shall receive an allocation of summer months of employment for summer school teaching curriculum development, and staff development. The allocation shall be one month of employment for each ten State-allotted teachers. (1985, c. 479, s. 44.)

§ 115C-363.5. Evaluators.

Between July 1, 1985, and July 1, 1986, the local board of education in each local unit shall select and train at least one evaluator for each 96 employees to be evaluated. The State Board shall set standards for evaluators. The State Board shall also establish an appropriate training program for evaluators and administrators and assist each local unit in implementing the training program. These evaluators shall work with principals to carry out the provisions of this Article.

Each evaluator shall be a practicing educator and shall be employed by the local board for which the evaluator is serving as an evaluator. Funds for evaluators shall be allotted by the State Board to pilot units on the basis of one month of employment for every eight teachers to be evaluated, with a minimum allotment of 12 months per unit. Evaluators shall be paid the same salary as supervisors on the State base salary schedule. The State Board shall adopt rules regarding the employment and use of evaluators. (1985, c. 479, s. 45.)

§ 115C-363.6. Local coordinator of career development.

For the 1985-86 fiscal year, the State Board shall allot 12 months of professional staff time to each pilot local unit for a coordinator of career development. The coordinators' pay grade shall be set by the State Board within funds appropriated for this purpose. (1985, c. 479, s. 46.)

§ 115C-363.7. Effective teacher training.

Each employee who elects to participate in the Plan shall participate in an effective teacher training program designed by the State Board. If an employee successfully completes the program, the employee shall receive a one-time stipend of five hundred dollars (\$500.00). An employee who does not successfully complete the program may not receive any part of the stipend. (1985, c. 479, s. 47.)

§ 115C-363.8. Implementation of pilot programs.

Between July 1, 1985, and July 1, 1986, the 16 local school administrative units shall prepare to implement their local career development plans. All of these local units shall use the State appraisal instrument and the evaluation process adopted by the State Board. In addition to using the State appraisal instrument and the evaluation process adopted by the State Board, they may also develop and implement an alternative evaluation program approved in advance by the State Board. The Charlotte-Mecklenburg School Administrative Unit may continue to implement the career development plan that it has already begun and shall receive a pro rata share of funds appropriated for implementation of pilot programs.

Implementation of the local plans shall begin July 1, 1986. (1985, c. 479, s. 48.)

§ 115C-363.9. Employees' option to participate in the Career Development Plan.

An individual employed by a local board of education prior to the implementation in that local school administrative unit of a plan applicable to that employee may opt to participate in the Plan or to continue under the system of employment in effect prior to implementation of the Plan. If an employee opts to participate in the Plan, that employee may opt out of the Plan at any time: Provided, however, an employee may opt out of the Plan only once during the pilot.

A person employed by a local board of education after the implementation in that local school administrative unit of a plan applicable to him shall participate in the Plan and may not elect to be under a system of employment in effect prior to the time the person was employed. (1985, c. 479, s. 49.)

§ 115C-363.10. Report to the General Assembly.

Beginning in 1986, the State Board shall report on February 1 of each year to the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Appropriations Base Budget Committee, the Appropriations Expansion Budget Committee, the Appropriations Base Budget Committee on Education, and the Appropriations Expansion Budget Committee on Education of the Senate and the House of Representatives, and the Fiscal Research Division on the continuing development and the implementation of the Career Development Plan.

The report shall include the recommendation of each local unit regarding criteria for the establishment of Career Status III. Career Status III might provide for a salary two steps above what an employee would otherwise have received. (1985, c. 479, s. 50.)

§ 115C-363.11. Salary under the Plan.

(a) During the 1985-86 school year, the stipend set out in G.S. 115C-363.7 for successful completion of effective teacher training is the only supplemental salary payment an employee may receive pursuant to the provisions of this Article.

(b) The State salary schedule applicable for the 1986-87 fiscal year to employees participating in the pilot programs established pursuant to G.S. 115C-363 is as follows:

<u>STEP</u>	<u>CAREER I</u>	<u>CAREER II</u>	<u>PRIOR YEARS SERVICE</u>
1	1879		3
2	1963		4
3	2054		5
4	2153	2366	6
5	2259	2484	7
6	2366	2604	8
7	2484	2732	9
8	2604	2863	12
9	2732	3002	15
10	2863	3143	18
11	3002	3301	21

The salary for Initial Status shall be one thousand five hundred sixty-eight dollars (\$1,568). The salary for Provisional Status shall be one thousand seven hundred fifteen dollars (\$1,715). In addition, each employee shall be eligible to receive the statewide allowance for masters' degrees, advanced certificates, and earned doctorates, as appropriate.

This salary schedule shall be modified to incorporate any modification in the State base salary schedule and any salary increments adopted by the General Assembly.

(c) If the pilot programs established pursuant to the provisions of G.S. 115C-363 are discontinued, any employee who has received a salary increment pursuant to the Career Development Plan shall continue to be paid the salary increment; however, the employee shall not receive any additional State annual increments, cost-of-living increments, or other salary increments unless the employee's salary would otherwise be less than the salary applicable to him on the State base salary schedule.

(d) If an employee opts out of the Career Development Plan, the employee's salary shall be the salary applicable to him on the State base salary schedule. (1985, c. 479, s. 51.)

SUBCHAPTER VI. STUDENTS.

ARTICLE 25.

*Admission and Assignment of Students.***§ 115C-366. Assignment of student to a particular school.**

CASE NOTES

Constitutionality. — See *Harris v. Hall*, 572 F. Supp. 1054 (E.D.N.C. 1983).

§ 115C-366.1. Local boards of education; tuition charges.

(a) Local boards of education may charge tuition to the following persons:

- (1) Persons of school age who are not domiciliaries of the State.
- (2) Persons of school age who are domiciliaries of the State but who do not reside within the school administrative unit or district.
- (3) Persons of school age who reside on a military or naval reservation located within the State and who are not domiciliaries of the State. Provided, however, that no person of school age residing on a military or naval reservation located within the State and who attends the public schools within the State may be charged tuition if federal funds designed to compensate for the impact on public schools of military dependent persons of school age are funded by the federal government at not less than fifty percent (50%) of the total per capita cost of education in the State, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school administrative unit.
- (4) Persons who are 21 years of age or older before the beginning of the school year in which they wish to enroll.

(1981, c. 567, ss. 2-4; 1982, Ex. Sess., c. 2, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 22; 1985, c. 780, s. 2.)

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

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 780, s. 5 provides that the act shall be administered from funds appropriated to the Department of Public Instruction for fiscal

years 1985-86 and 1986-87 and shall not necessitate additional appropriations for those years.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added subdivision (a) (4).

The 1985 amendment, effective July 17, 1985, substituted "21" for "19" in subdivision (a)(4).

CASE NOTES

Applied in *Floyd v. Lumberton City Bd. of Educ.*, — N.C. App. —, 324 S.E.2d 18 (1984).

ARTICLE 26.

Attendance.

Part 1. Compulsory Attendance.

§ 115C-378. Children between seven and 16 required to attend.

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 parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school policy.

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 or his designee shall notify the parent, guardian, or custodian of his child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal shall notify the parent, guardian, or custodian by mail that he may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. 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 coun-

selor may request that a law-enforcement officer accompany him if he believes that a home visit is necessary.

After 10 accumulated unexcused absences in a school year the principal shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and his parent, guardian, or custodian if possible to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal determines that parent, guardian, or custodian has not, he shall notify the district attorney. If he determines that parent, guardian, or custodian has, he may file a complaint with the juvenile intake counselor under G.S. 7A-561 that the child is habitually absent from school without a valid excuse. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local 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; 1981, c. 423, s. 1; 1985, c. 297.)

Effect of Amendments. — The 1985 amendment, effective August 1, 1985, added the last sentence of the first paragraph, substituted the present first and second sentences of the fourth paragraph for a former first sentence, which read "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 which ever occurs first, unless the principal is satisfied that these absences are excused under the established attendance policies of the local board," substituted the

present first through third sentences of the fifth paragraph for the former first and second sentences thereof, which read "Notification of a parent shall be in writing and shall state that the parent may be prosecuted under Part 1 of this Article 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," and substituted "10" for "30" in the last sentence of the fifth paragraph.

CASE NOTES

There are four ways by which school-aged children in this State may comply with school attendance statutes. First, under this section a child may attend public school. Second, under the same section, a child may attend an "approved," "nonpublic school" which maintains the required records and conducts its curriculum concurrently with the local public school. Third, a child may attend a "private church school or school of religious charter" which meets the requirements of § 115C-547 et seq.

Fourth, a child may attend a "nonpublic school" which "qualifies" by meeting the requirements of § 115C-555 et seq. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Stated in *Duro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983).

§ 115C-381. School social workers; reports; prosecutions.

The Superintendent of Public Instruction shall prepare such rules and procedures and furnish such blanks for teachers and other school officials as may be necessary for reporting such case of unlawful absence or lack of attendance to the school social worker of the respective local school administrative units. Such rules shall provide, among other things, for a notification in writing, to the person responsible for the nonattendance of any child, that the case is to be reported to the school social worker of the local school administrative unit unless the law is complied with immediately. Upon recommendation of the superintendent, local boards of education may employ school social workers and such school social workers shall have authority to report and verify on oath the necessary criminal warrants or other documents for the prosecutions of violations of this Part: Provided, that local school administrative units shall provide in their local operating budgets for travel and necessary office expense for such school social workers as may be employed through State or local funds, or both. The State Board of Education shall determine the process for allocating school social workers to the various local school administrative units, establish their qualifications, and develop a salary schedule which shall be applicable to such personnel: Provided, that persons now employed by local boards of education as attendance counselors shall be deemed qualified as school social workers under the terms of this Part subject to the approval of said local boards of education.

The school social worker shall investigate all violators of the provisions of this Part. The reports of unlawful absence required to be made by teachers and principals to the school social worker shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this Part and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, ss. 3, 5; 1957, c. 600; 1961, c. 186; 1963, c. 1223, ss. 8, 9; 1981, c. 423, s. 1; 1985, c. 686, s. 3.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, and applicable only to school years beginning with the 1985-86 school year, rewrote this section, which formerly related to attendance counselors.

§ 115C-382. Investigation of indigency.

If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and 16 years is not able to attend school by reason of necessity to work or labor for the support of himself or the support of the family, then the school social worker shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to com-

ply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable compliance with the attendance law. The court shall transmit its findings to the director of social services of the county or city in which the case may arise for such social services officer's consideration and action. (1955, c. 1372, art. 20, s. 6; 1961, c. 186; 1963, c. 1223, s. 10; 1969, c. 982; 1981, c. 423, s. 1; 1985, c. 686, s. 4.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, and applicable only to school years beginning with the 1985-86 school year, sub-

stituted "school social worker" for "attendance counselor" in the first sentence.

ARTICLE 28.

Student Liability.

§ 115C-398. Damage to school buildings, furnishings, textbooks.

Students and their parents or legal guardians may be liable for damage to school buildings, furnishings and textbooks pursuant to the provisions of G.S. 115C-523, 115C-100 and 14-132. (1981, c. 423, s. 1; 1985, c. 581, s. 3.)

Effect of Amendments. — The 1985 amendment, effective July 3, 1985, in-

serted "and their parents or legal guardians".

ARTICLE 29.

Protective Provisions and Maintenance of Student Records.

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

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

The official record shall contain, as a minimum, adequate identification data including date of birth, attendance data, grading and promotion data, and such other factual information as may be deemed appropriate by the local board of education having jurisdiction over the school wherein the record is maintained.

The official record of each student is not a public record as the term "public record" is defined by G.S. 132-1. The official record shall not be subject to inspection and examination as authorized by G.S. 132-6. (1975, c. 624, ss. 1, 2; 1981, c. 423, s. 1; 1985, c. 268; c. 416.)

Effect of Amendments. — The 1985 amendment by c. 268, effective May 28, 1985, added “unless the local board determines that such files may be filed in the central office or other location design-

nated by the local board for that purpose” at the end of the first paragraph.

The 1985 amendment by c. 416, effective June 18, 1985, added the last paragraph.

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 30.

Financial Powers of the State Board of Education.

§ 115C-408. Funds under control of the State Board of Education.

(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner. The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in Section 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.

(b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study.

It is the policy of the State of North Carolina that the facilities requirements for a public education system will be met by county governments.

It is the intent of the 1983 General Assembly to further clarify and delineate the specific financial responsibilities for the public schools to be borne by State and local governments. (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; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 12.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: “This act may be referred to as the ‘Elementary and Secondary School Reform Act of 1984.’”

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, rewrote this section.

§ 115C-416. Power to allot funds for teachers and other personnel.

The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the

teacher loan from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to local school administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the local school administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for school social workers.

The Board is further authorized, in its discretion, to allot teaching personnel to local school administrative units for experimental programs and purposes. (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; 1981, c. 423, s. 1; 1985, c. 686, s. 1.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, and applicable only to school years beginning with the 1985-86 school year, sub-

stituted "school social workers" for "attendance counselors" in the second paragraph.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

§ 115C-423. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

- (6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 167.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective Oct. 1, 1984, added subdivision (6).

Part 2. Budget.

§ 115C-426.1. Vending facilities.

Moneys received by a local school administrative unit on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 168.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 175, makes this section effective Oct. 1, 1984. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Part 3. Fiscal Control.

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

Revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7, of the Constitution and taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511 shall be remitted to the school finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, Sec. 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected. Revenues appropriated to the local school administrative unit by the board of county commissioners from general county revenues shall be made available to the school finance officer by such procedures as may be mutually agreeable to the board of education and the board of county commissioners, but if no such agreement is reached, these funds shall be remitted to the school finance officer by the county finance officer in monthly installments sufficient to meet its lawful expenditures from the county appropriation until the county appropriation to the local school administrative unit is exhausted. Each installment shall be paid not later than 10 days after the close of each calendar month. When revenue has been appropriated to the local school administrative unit by the board of county commissioners from funds which carry specific restrictions binding upon the county as recipient, the board of commissioners must inform the local school administrative unit in writing of those restrictions. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985, c. 779.)

Effect of Amendments. — The 1985 amendment, effective July 17, 1985, inserted the second sentence.

§ 115C-441. Budgetary accounting for appropriations.

(a) Incurring Obligations. — Except as set forth below, no obligation may be incurred by a local school administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this section. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

(Date)

(Signature of finance officer)"

An obligation incurred in violation of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this section.

(c1) Continuing Contracts for Capital Outlay. — An administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed and/or paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, provided:

- (i) The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation;
- (ii) An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year; and
- (iii) Contracts for capital outlay expenditures are approved by a resolution adopted by the board of county commissioners, which resolution when adopted shall bind the board of county commissioners to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

(1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985, c. 783, ss. 1, 2.)

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

Local Modification. — Burke County and Burke County School Administrative Unit: 1985, c. 198.

Effect of Amendments. — The 1985

amendment, effective July 1, 1985, inserted "Except as set forth below" at the beginning of subsection (a), substituted "section" for "subsection" in the second and last two sentences of subsection (a), and inserted subsection (c1).

§ 115C-443. Investment of idle cash.

(b) Moneys may be deposited at interest at any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Local Government Commission may approve. Investment deposits shall be secured as provided in G.S. 115C-444(b).

(1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985, c. 246, s. 1.)

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

Effect of Amendments. — The 1985 amendment, effective May 24, 1985, in

the first sentence of subsection (b) substituted "at any bank" for "in any bank" and inserted "savings and loan association" thereafter.

§ 115C-444. Selection of depository; deposits to be secured.

(a) Each board of education shall designate as the official depositories of the local school administrative unit one or more banks, savings and loan associations, or trust companies in this State. It shall be unlawful for any money belonging to a local school administrative unit or an individual school to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 115C-443(b); however, moneys belonging to an administrative unit or an individual school may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts.

(1975, c. 437, s. 1; 1981, c. 423, s. 1; c. 682, s. 23; c. 866, ss. 1, 2; 1985, c. 246, s. 2.)

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

Effect of Amendments. — The 1985

amendment, effective May 24, 1985, inserted "savings and loan associations" in the first sentence of subsection (a).

ARTICLE 32A.

Scholarship Loan Fund for Prospective Teachers.

§ 115C-468. Establishment of fund.

There is hereby established a revolving loan fund which shall be known as the "Scholarship Loan Fund for Prospective Teachers." (1957, c. 1237; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1.)

Editor's Note. — Sections 115C-468 through 115C-471 were formerly §§ 116-171 through 116-174. They were transferred to their present position by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 10.1, effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 10, allocates \$400,000 to the Scholarship Loan Fund for Prospective Teachers established by this section to

provide 200 scholarship loans at \$2,000 each during the 1984-85 school year. Section 10 further provides: "It is the intent of the General Assembly to appropriate sufficient funds for this purpose in future fiscal years to continue each scholarship for four school years and to provide 200 new scholarships every school year through 1987-88; thus, beginning with the 1987-88 school year,

800 scholarships would be provided each school year. All scholarships provided pursuant to this section shall be subject to the provisions of Article 18 of Chapter 116 [now Article 32A of Chapter 115C] of the General Statutes except as otherwise provided in this section and except that the criteria for awarding scholarships shall be measures of academic performance including grade point average, scores on standardized tests, class rank, and recommendations of guidance counselors. Also, an equal number of scholarships shall be awarded in each of the State's congressional districts."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 479, s. 19, provides:

"The funds appropriated to the Department of Public Education in Section 2 of this act to provide an additional 200

scholarship loans at two thousand dollars (\$2,000) each during each year of the 1985-87 biennium shall be allocated to the Scholarship Loan Fund for Prospective Teachers established by G.S. 115C-468, along with sufficient funds to continue the 200 new scholarship loans set up in 1984-85. All scholarships provided pursuant to this section are subject to the provisions of Article 32A of Chapter 115C of the General Statutes except as otherwise provided in this section. The criteria for awarding scholarships shall be measures of academic performance, including grade point average, scores on standardized tests, class rank, and recommendations of guidance counselors. Insofar as possible, an equal number of scholarships shall be awarded in each of the State's congressional districts."

§ 115C-469. Appropriations paid into fund; how administered.

Such funds as may be appropriated by the General Assembly to said fund or to the State Board of Education for the purpose of a student loan fund for teacher education shall be paid into the Scholarship Loan Fund for Prospective Teachers and administered by the State Board of Education and the State Superintendent of Public Instruction as follows:

During the first year of the 1957-1959 biennium, to provide for prospective teachers not to exceed 300 regular scholarship loans in the amount of not more than three hundred fifty dollars (\$350.00) each, and for the second year of the biennium to provide for such persons not to exceed 600 regular scholarship loans in the amount of not more than three hundred fifty dollars (\$350.00) each, and for each summer of said biennium to provide for prospective teachers and for teachers taking undergraduate courses not to exceed 200 summer school scholarship loans in the amount of not more than seventy-five dollars (\$75.00) each; provided, however, the State Board of Education in its discretion may, within the funds available, vary the number and proportion of regular and summer scholarship loans to be established in any one year.

During years after the first biennium in which this fund shall be established, loans of the type and amounts provided for during the first biennium shall be made in such numbers and amounts and proportions as the State Board of Education in its discretion may prescribe within the funds available from appropriations or otherwise. (1957, c. 1237; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1.)

§ 115C-470. Duration of fund; loans repaid and interest received added to fund and administered for same purposes.

The Scholarship Loan Fund for Prospective Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina and such amounts of loans as shall be repaid from time to time under the provisions of this Article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said loan fund and shall be administered for the same purposes and under the same provisions as are set forth herein to the end that such funds may be utilized in addition to such further amounts as may be appropriated from time to time by the General Assembly to said loan fund. (1957, c. 1237; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1.)

§ 115C-471. Fund administered by State Superintendent of Public Instruction; rules and regulations.

The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

- (1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State shall be eligible to apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than three hundred fifty dollars (\$350.00) per academic school year and any such person or any person who is teaching in the public schools of the State and is interested in taking further undergraduate courses shall be eligible to apply for a summer school scholarship loan in the amount of not more than seventy-five dollars (\$75.00). Recipients of scholarship loans may attend any North Carolina college or university, public or private, which offers teacher training or work leading to teacher training and which is approved by the State Board of Education; except that scholarship loans may not be used in obtaining credit through correspondence or extension courses.
- (2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of six percent (6%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a teacher's certificate based upon the bachelor's degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of subdivision (3) of this section then

such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.

- (3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until he has qualified for a teacher's certificate based upon the bachelor's degree, but he shall not be so eligible for more than four years nor after qualifying for said certificate. The permanent withdrawal of any recipient from college or failure of such recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction will immediately forfeit such recipient's right to retain such scholarship and subject such scholarship to termination by the State Superintendent of Public Instruction in his discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.
- (4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina or shall become regularly employed as teachers in schools operated by the United States government on military reservations in the State of North Carolina at the beginning of the next school term after qualifying for a teacher certificate based upon the bachelor's degree or in case of persons already teaching in the public schools or in schools operated by the United States government on military reservations in North Carolina at the beginning of the next school term after the use of such loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered within seven years after the completion of the use of each such scholarship loan.
- (5) For each full school year taught in a North Carolina public school or in a school operated by the United States government on the military reservation in the State of North Carolina, the recipient of a scholarship loan shall receive credit upon the amount due by reason of such loan equal to all interest accrued upon the loan to that time plus a credit of three hundred fifty dollars (\$350.00) upon the principal amount of such obligation or such lesser amount as may remain due upon said principal; provided, however, that in lieu of teaching in the public school or in any school operated by the United States government on a military reservation in North Carolina, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof which has not been canceled by the State Board of Education by reason of teaching service rendered.
- (6) If any recipient of a scholarship loan who is fulfilling his obligation under subdivision (4) of this section dies within

the seven-year period, or if any recipient dies during the period of attendance at a college or university under a scholarship loan, any balance that has not been discharged through service shall be automatically canceled.

If any recipient of a scholarship loan fails to fulfill his obligations under subdivision (4) of this section, other than as provided above, the amount of his loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill such obligations.

- (7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to such factors and circumstances as: aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference shall be given to high school seniors in the awarding of scholarships. (1957, c. 1237; 1973, c. 581, ss. 1, 2; 1975, c. 750, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1.)

§ 115C-472. State policy.

It is the policy of the State of North Carolina to encourage entry into the teaching profession by those who are prepared to teach in those areas where teachers are most needed. To this end, the State Board of Education shall recommend to the General Assembly by November 1, 1984, a method of providing loan and scholarship assistance to prospective teachers in areas of anticipated shortage.

This recommendation shall include, at least, the anticipated needs, the level of funding and a mechanism to evaluate the results of the program. (1983 (Reg. Sess., 1984), c. 1103, s. 13.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 14, makes this section effective July 6, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1103, s. 1, provides: "This act may be referred to as the 'Elementary and Secondary School Reform Act of 1984'."

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

ARTICLE 36.

Voted Tax Supplements for School Purposes.

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

CASE NOTES

Applied in *Floyd v. Lumberton City Bd. of Educ.*, — N.C. App. —, 324 S.E.2d 18 (1984).

SUBCHAPTER IX. PROPERTY.

ARTICLE 37.

*School Sites and Property.***§ 115C-517. Acquisition of sites.**

Local Modification. — Charlotte-Mecklenburg County School Administrative Unit: 1985, c. 229.

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

Local Modification. — Davie County Board of Education: 1985, c. 18; Hertford County Board of Education: 1985, c. 123, s. 2; Albemarle City School Administrative Unit: 1985, c. 74.

Cross References. —

For provision exempting services, products, and properties generated through vocational education instructional activities from the requirements of this section, see § 115C-159.

§ 115C-521. Erection of school buildings.

(c) The building of all new schoolhouses and the repairing of all old schoolhouses shall be under the control and direction of, and by contract with, the board of education in which such building and repairing is done. Boards of education shall not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441 (c1). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor: Provided, that this subsection shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of said board.

In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under such rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of said loan or grant, until such completed buildings, erected or repaired, in whole or in part, from such loan or grant funds, shall have been approved by a designated agent of the State Board of Education.

Upon such approval by the State Board of Education, the State Treasurer is authorized to pay the balance of the loan or grant to the treasurer of the local school administrative unit for which said loan or grant was made.

(1955, c. 1372, art. 15, ss. 5-7; 1969, c. 1022, s. 1; 1981, c. 423, s. 1; c. 638, s. 1; 1983, c. 761, s. 93; 1985, c. 783, s. 3.)

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

Local Modification. — Burke County and Burke County School Administrative Unit: 1985, c. 198; Burke County Board of Education: 1985, c. 230.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1985, inserted the present third sentence of subsection (c).

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

(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase.

(1955, c. 1352, art. 5, s. 35; art. 15, s. 8; 1965, c. 840; 1973, c. 476, s. 128; 1981, c. 423, s. 1; 1985, c. 436, s. 2.)

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

Effect of Amendments. — The 1985 amendment, effective June 21, 1985, rewrote the proviso at the end of the second sentence of subsection (a), which formerly read "Provided, that no contracts shall be made by any local school administrative unit for purchases unless provi-

sion has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase."

§ 115C-523. Care of school property.

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if

they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

Notwithstanding any other provision of law, the parents or legal guardians of any minor are liable for any gross negligence or willful damage or destruction of school property by that minor to the extent of five thousand dollars (\$5,000). The Board of Education shall make written demand upon the parent or legal guardian as a prerequisite to bringing suit.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7; 1981, c. 423, s. 1; 1985, c. 581, s. 4.)

Effect of Amendments. — The 1985 amendment, effective July 3, 1985, rewrote the second paragraph, which formerly read "If any child in school shall carelessly or willfully damage school property, the teacher or principal

shall report the damage to the parent, and if the parent refuses to pay the cost of repairing the same, the teacher or principal shall report the offense to the superintendent of schools."

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

ARTICLE 39.

Nonpublic Schools.

Part 1. Private Church Schools and Schools of Religious Charter.

§ 115C-547. Policy.

CASE NOTES

Purpose. — The evident purpose of Parts 1 and 2 of Article 39 Chapter 115C is to loosen, rather than tighten, the standards for nonpublic education in North Carolina. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Home Instruction of Children. —

Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Cited in *Duro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983).

§ 115C-548. Attendance; health and safety regulations.

CASE NOTES

There are four ways by which school-aged children in this State may comply with school attendance statutes. First, under § 115C-378 a child may attend public school. Second, under the same section, a child may attend an "approved," "nonpublic school" which maintains the required records and conducts its curriculum concurrently with the local public school. Third, a child may attend a "private church school or school of religious charter" which meets the requirements of § 115C-547 et seq.

Fourth, a child may attend a "nonpublic school" which "qualifies" by meeting the requirements of § 115C-555 et seq. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Applied in *Duro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983).

§ 115C-549. Standardized testing requirements.

CASE NOTES

Applied in *Duro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983).

§ 115C-550. High school competency testing.

CASE NOTES

Applied in *Duro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983).

Part 2. Qualified Nonpublic Schools.

§ 115C-555. Qualification of nonpublic schools.

CASE NOTES

Purpose. — The evident purpose of Parts 1 and 2 of Article 39 of Chapter 115C is to loosen, rather than tighten, the standards for nonpublic education in North Carolina. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Each subdivision of this section is equally specific and discrete and stands on its own footing. And this section clearly requires that only one of the

"characteristics" which it sets out be present. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

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§ 115C-556. Attendance; health and safety regulations.

CASE NOTES

There are four ways by which school-aged children in this State may comply with school attendance statutes. First, under § 115C-378 a child may attend public school. Second, under the same section, a child may attend an "approved," "nonpublic school" which maintains the required records and conducts its curriculum concurrently with the local public school. Third, a child may attend a "private church school or school of religious charter" which meets

the requirements of § 115C-547 et seq. Fourth, a child may attend a "nonpublic school" which "qualifies" by meeting the requirements of § 115C-555 et seq. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

§ 115C-557. Standardized testing requirements.

CASE NOTES

Applied in *Duro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983).

Stated in *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

§ 115C-558. High school competency testing.

CASE NOTES

Stated in *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

§ 115C-560. New school notice requirements; termination.

CASE NOTES

Cited in *Delconte v. State*, — N.C. —, 329 S.E.2d 636 (1985).

ARTICLE 40.

Proprietary Schools.

§ 115C-575: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 17, effective June 27, 1984.

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.
- 115D-3. Department of Community Colleges; staff; advisory council.
- 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities; approval of new programs.

Article 2.

Local Administration.

- 115D-12. Each institution to have board of trustees; selection of trustees.

Sec.

- 115D-13. Terms of office of trustees.
- 115D-16. Elective officials serving as trustees.
- 115D-20. Powers and duties of trustees.
- 115D-21. (Effective July 1, 1986) Traffic regulations; fines and penalties.

Article 3.

Financial Support.

- 115D-31. State financial support of institutions.
- 115D-32. Local financial support of institutions.
- 115D-39. Student tuition and fees.
- 115D-40. Community College Scholarship Fund.
- 115D-41 to 115D-44. [Reserved.]

Article 4A.

Budgeting, Accounting, and Fiscal Management.

- 115D-58.12. Liability insurance; tort actions against board of trustees.
- 115D-58.13. Vending facilities.
- 115D-58.14 to 115D-58.17. [Reserved.]

ARTICLE 1.

General Provisions for State Administration.

§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction may, if approved by the director of the training

school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission. (1963, c. 448, s. 23; 1969, c. 562, s. 1; 1979, c. 462, s. 2; 1985, c. 479, s. 68.)

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, added the proviso at the end of the second sentence.

§ 115D-2. Definitions.

As used in this Chapter:

- (8) "Vending facilities" has the same meaning as it does in G.S. 143-12.1. (1963, c. 448, s. 23; 1969, c. 562, s. 2; 1973, c. 590, s. 1; 1979, c. 462, s. 2; c. 553; c. 896, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 761, s. 104; 1983 (Reg. Sess., 1984), c. 1034, s. 169.)

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

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984),

c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective Oct. 1, 1984, added subdivision (8).

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

(b) The State Board of Community Colleges shall consist of 20 members, as follows:

- (1) The Lieutenant Governor (or a person designated by the Lieutenant Governor) shall be a member ex officio.
- (2) The Treasurer of North Carolina shall be a member ex officio.
- (3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in G.S. 115D-63 [G.S. 115D-62]. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member.
- (4) The General Assembly shall elect eight members of the State Board from the State at large in the following manner:

- a. In 1980, the Senate shall elect three members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and one of whom shall serve a term expiring June 30, 1985. In 1985, the Senate shall elect two members to serve terms expiring June 30, 1991. Each subsequent regular election by the Senate shall be for a term of six years and until a successor is elected and qualifies.
- b. In 1980, the House of Representatives shall elect four members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and two of whom shall serve a term expiring June 30, 1985. In 1985, the House of Representatives shall elect two members, to serve terms expiring June 30, 1991. Each subsequent regular election by the House of Representatives shall be for a term of six years and until a successor is elected and qualifies.
- c. Repealed by Session Laws 1985, c. 227, s. 5, effective May 23, 1985.
- d. The initial elections by the two houses of the General Assembly shall be held on or before July 1, 1980.
- e. Any vacancy occurring among the members elected by the two houses of the General Assembly before the expiration of term shall be filled when the General Assembly next convenes. The member then elected shall be elected by the same house that elected the member whom he succeeds, and shall serve for the remainder of the unexpired term of that member.
- f. At each session of the General Assembly held in an odd-numbered year, the presiding officer of each house shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote "aye" or "no" on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates are submitted to the committee of the House of Representatives then that committee shall nominate at least two persons for each place to be filled by the

House of Representatives, otherwise that committee shall nominate at least one person for each place to be filled by the House of Representatives. The committee of the Senate shall nominate at least two persons for each place to be filled by the Senate. No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote "aye," persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board.

(1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474; 1983, c. 311; c. 479, ss. 1-3; 1985, c. 227, ss. 1-5; c. 428.)

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

Effect of Amendments. —

The 1985 amendment by c. 227, effective May 23, 1985, and applicable to elections made in 1985 and thereafter, substituted "20 members" for "19 members" in the introductory language of subsection (b), substituted "eight members" for "seven members" in the introductory language of subdivision (b)(4), inserted the present second sentence of paragraph (b)(4)a, inserted the present second sentence of paragraph (b)(4)b, and deleted paragraph (b)(4)c, which read "In 1985, upon expiration of the

term of the fourth member elected by the House of Representatives in 1980, that seat shall be filled by election by the Senate of a member to serve a term of six years; and the right to elect to fill that seat on the State Board shall thereafter rotate between the two houses every six years."

The 1985 amendment by c. 428, effective June 19, 1985, substituted the present eighth and ninth sentences of paragraph (b)(4)f for a former eighth sentence which read "The committee of each house shall nominate at least two persons for each place to be filled by that house."

§ 115D-3. Department of Community Colleges; staff; advisory council.

The Department of Community Colleges shall be a principal administrative department of State government under the direction of the State Board of Community Colleges, and shall be separate from the free public school system of the State and the Department of Public Education. The State Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the 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 General Assembly in the Current Operations Appropriations Act.

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 compensation of the staff members elected by the Board shall be fixed by the Governor and State Board of Community Colleges after consultation with the Advisory Budget Commission. These staff members shall include such officers as may be deemed desirable by the State President and 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 of Community Colleges 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. (1963, c. 448, s. 23; 1971, c. 1244, s. 14; 1975, c. 699, s. 5; 1979, c. 462, s. 2; c. 896, s. 3; 1979, 2nd Sess., c. 1130, ss. 1, 2; 1981, c. 859, s. 35.2; 1983, c. 479, s. 4; c. 717, s. 26; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amend-

ment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities; approval of new programs.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Human Resources Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction, 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.

(f) A community college or technical institute may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college or technical institute, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Advisory Budget Commission

on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67.)

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

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 57 provides:

"Effective July 1, 1986, the formula for distribution of funds for curriculum and extension programs by the State Board of Community Colleges for the operating budgets of the institutions of the Community College System may set no minimum number of full-time equivalent students for which funding shall be

granted and may in no case protect the level of funding of an institution that experienced a decline in full-time equivalent students."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added the last clause of the catchline and added subsection (f).

The 1985 amendment, effective July 1, 1985, inserted "students in Human Resources Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction" near the end of the third sentence of subsection (b).

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, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, 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. Provided, also, the county commissioners of the county in which the community college or technical institute has established a satellite campus may elect an

additional two members if the board of trustees of the community college or technical institute agrees. 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.

(1963, c. 448, s. 23; 1977, c. 823, ss. 1-4; 1979, c. 462, s. 2; 1985, c. 757, s. 147.)

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

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, inserted "or of additional members if se-

lected according to the special procedure prescribed by the third paragraph of this subsection" in the first paragraph of subsection (a) and inserted the present third sentence of the third paragraph of subsection (a).

§ 115D-13. Terms of office of trustees.

(a) As the terms of members serving on boards of trustees on June 30, 1985, expire, except for the ex officio member, their successors shall be appointed for four-year terms.

(b) All terms shall commence on July 1 of odd-numbered years. (1963, c. 448, s. 23; 1977, c. 823, s. 5; 1979, c. 462, s. 2; 1985, c. 58.)

Effect of Amendments. — The 1985 amendment, effective April 4, 1985, rewrote this section.

§ 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. Appointments made on or before July 1, 1985, by boards of county commissioners or local boards of education of their own members as trustees are hereby validated, ratified, and confirmed. (1979, c. 462, s. 2; 1985, c. 773.)

Effect of Amendments. — The 1985 amendment, effective July 16, 1985, added the second 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 Community Colleges. The powers and duties of trustees shall include the following:

- (4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. Provided, notwithstanding any law or administrative rule to the contrary, local administrative boards and local school boards may establish cooperative programs in the areas they serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges.

(1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 901, s. 2; 1983, c. 378, s. 1; c. 596, s. 1; 1985, c. 191.)

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

amendment, effective May 16, 1985, added the last sentence of subdivision (4).

Effect of Amendments. — The 1985

§ 115D-21. (Effective July 1, 1986) 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. Violation of any such rules, regulations, or ordinances, is an infraction punishable by a penalty of not more than one hundred dollars (\$100.00).

Regardless of whether an institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

- (1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
- (2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. Provide by contract or ordinance for a schedule of reasonable towing fees,
 - b. Provide a procedure for a prompt fair hearing to contest the towing,
 - c. Provide for an appeal to district court from that hearing,
 - d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(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; 1983, c. 420, s. 4; 1985, c. 764, s. 38.)

For this section as in effect until July 1, 1986, see the main volume.

Editor's Note. — Session Laws 1985, c. 764, s. 40 provides that offenses committed before the effective date of the act (July 1, 1986) shall be governed by the law in effect at the time of the offense.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1986, and applicable to offenses committed on or after that date, rewrote the

fifth sentence of subsection (b), which read "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."

ARTICLE 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

- (1) Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college or technical institute pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143-31.4, appropriations by the State of North Carolina for capital or permanent improvements for community colleges and technical institutes may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.
- (2) Current Operating Expenses:
 - a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.
 - b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.

c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

- (3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2; 1985, c. 757, s. 146.)

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

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 36, provides, inter alia:

"Notwithstanding the matching requirements in G.S. 116-53(b) and G.S. 115D-31, the matching requirements for the institutions receiving capital appropriations in this paragraph shall be as follows:

"(1) No institution shall be required to match State appropriations for capital projects until the funds expended for capital projects from State appropriations (excluding vocational educational funds) equal expenditures from local funds;

"(2) Funds appropriated to Isothermal Community College for the Polk County satellite and to Central Carolina Technical Institute for a classroom, lab, and shop building shall be matched dollar for dollar with cash expenditures; and

"(3) Funds appropriated to house a regional program at Southwestern Technical College shall not require a local match.

"Also, the sum of one hundred thousand dollars (\$100,000) shall be allocated by the State Board of Community Colleges to fund feasibility studies for proposed new capital projects.

"The sum of three million five hundred thirty thousand dollars (\$3,530,000) allocated to Southwestern Technical College in this section shall be used to construct a Regional Allied Health and Geriatrics Training Center. The Center will serve a regional, multi-county area in Western North Carolina; therefore, this allocation is exempt from matching requirements in accordance with G.S. 116-53(b) and G.S. 115D-31. A committee consisting of the Chancellor of Western Carolina University, the Presidents of Southwestern Technical College, Haywood Technical College, and Tri-County Community College, or

their designees, and two faculty members of Western Carolina University shall coordinate the services offered by the Center to avoid overlapping and duplicative efforts involving allied health and geriatrics training by these four institutions."

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 110.1, provides:

"Notwithstanding the matching requirements in Section 36 of Chapter 1034 of the 1983 Session Laws, Tri-County Community College shall not be required to provide matching funds for

capital appropriations as allocated to the Tri-County Community College in Section 36 of Chapter 1034 of the 1983 Session Laws."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 and c. 1116, s. 115, are severability clauses.

Section 115D-45, referred to in this section, has been recodified as § 115D-54.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, added the last sentence of subdivision (a)(1).

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

(d) The counties that agree to have satellite campuses of community colleges or technical institutes located in them accept the maintenance and utility costs of these satellite campuses. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 3; 1985, c. 757, s. 148(a).)

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

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, added subsection (d).

§ 115D-39. Student tuition and fees.

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 58.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983

(Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "116-143.3" for "116-143.2" in the last paragraph.

§ 115D-40. Community College Scholarship Fund.

(a) A nonreverting Community College Scholarship Fund is created in the Department of Community Colleges to provide community college scholarships for needy residents of North Carolina. The State Board of Community Colleges shall adopt rules regarding administration of the Fund and eligibility for scholarships from it. The Department of Community Colleges shall administer the Fund. The Department of Community Colleges shall make an effort to assure that the scholarships are distributed on a geographically equitable basis throughout the State among the several institutions. The principal of the Fund may not be used for any purpose; interest from the Fund may not be used for administering the Fund.

(b) Moneys in the Fund shall be deposited with the State Treasurer and administered under the provisions of G.S. 147-69.3. The State Treasurer shall make the interest earned on the moneys available to the Department of Community Colleges as needed for scholarships. (1983 (Reg. Sess., 1984), c. 1034, s. 38.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this section effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

§§ 115D-41 to 115D-44: Reserved for future codification purposes.

ARTICLE 4A.

Budgeting, Accounting, and Fiscal Management.

§ 115D-58.12. 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 or from other qualified companies as determined by the Department of Insurance. 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.

(1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 1; 1985, c. 489.)

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

Effect of Amendments. — The 1985 amendment, effective June 27, 1985,

added "or from other qualified companies as determined by the Department of Insurance" at the end of the first sentence of subsection (a).

§ 115D-58.13. Vending facilities.

Moneys received by an institution on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 170.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 175, makes this section effective Oct. 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

§§ 115D-58.14 to 115D-58.17: Reserved for future codification purposes.

Chapter 116. Higher Education.

Article 1.

The University of North Carolina.

Part 1. General Provisions.

Sec.

116-2. Definitions.

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

116-11. Powers and duties generally.

116-15. Licensing of certain nonpublic post-secondary educational institutions.

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

Part 3. Constituent Institutions.

116-36.4. Vending facilities.

Part 4A. Distinguished Professors Endowment Trust Fund.

116-41.13. Distinguished Professors Endowment Trust Fund; purpose.

116-41.14. Distinguished Professors Endowment Trust Fund; establishment; maintenance.

116-41.15. Distinguished Professors Endowment Trust Fund; allocation; administration.

116-41.16. Distinguished Professors Endowment Trust Fund; contribution commitments.

116-41.17. Distinguished Professors Endowment Trust Fund; establishment of chairs.

116-41.18. Distinguished Professors Endowment Trust Fund; selection of Distinguished Professors.

116-41.19. Distinguished Professors Endowment Trust Fund; promulgation of rules.

Part 6. Traffic and Parking.

116-44.4. (Effective July 1, 1986) Regulation of traffic and parking and registration of motor vehicles.

Article 4.

North Carolina School of the Arts.

116-66. Powers of various boards.

116-67. [Repealed.]

Article 5.

Loan Fund for Prospective College Teachers.

Sec.

116-74.1 to 116-74.5. [Reserved.]

Article 5A.

Center for Advancement of Teaching.

116-74.6. North Carolina Center for the Advancement of Teaching established; powers and duties of trustees.

116-74.7. Composition of board of trustees; terms; officers.

Article 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

116-143.3. Tuition of personnel in the armed services.

Article 18.

Scholarship Loan Fund for Prospective Teachers.

116-171 to 116-174. [Transferred.]

Article 28.

North Carolina-Israel Visiting Scholar Program.

116-230. North Carolina-Israel Visiting Scholar Program.

Article 29.

The North Carolina School of Science and Mathematics.

116-230.1. Policy.

116-231. Reestablishment of the North Carolina School of Science and Mathematics as an Affiliated School of The University of North Carolina.

116-232. Purposes.

116-233. Board of Trustees; appointment; terms of office.

116-234. Board of Trustees; meetings; rules of procedure; officers.

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

116-236. Director of the School.

116-237. Educational Advisory Council.

116-238. Endowment fund.

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

- (6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 171.)

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

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective Oct. 1, 1984, added subdivision (6).

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

§ 116-3. Incorporation and corporate powers.

CASE NOTES

Applied in *Uzzell v. Friday*, 592 F. Supp. 1502 (M.D.N.C. 1984).

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

CASE NOTES

Applied in *Uzzell v. Friday*, 592 F. Supp. 1502 (M.D.N.C. 1984).

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

- (5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.

- (9) a. The Board of Governors shall develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas.
- b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum. The Board shall allocate to the institutions any funds appropriated, said allocation to be made in accordance with the Board's schedule of priorities and in accordance with any specifications in the Budget Appropriation Act; provided, however, that when both the Board and the Director of the Budget (after the Director of the Budget consults with the Advisory Budget Commission) deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category.
- c. The Director of the Budget after consultation with the Advisory Budget Commission may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions.
- d. Notwithstanding any other provision of law, any unencumbered or unexpended funds remaining in capital improvement codes credited to The University of North Carolina Board of Governors or the 16 constituent institutions for projects not enumerated by the General Assembly may be used for advance planning within the University system.

(1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152.)

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

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective October 1, 1984, inserted subdivision (5b).

The 1985 amendment, effective July 1, 1985, added paragraph (9)d.

Legal Periodicals. — For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

Applied in *Speck v. North Carolina Dairy Found., Inc.*, 311 N.C. 679, 319 S.E.2d 139 (1984).

§ 116-14. President and staff.

CASE NOTES

Applied in *Uzzell v. Friday*, 592 F. Supp. 1502 (M.D.N.C. 1984).

§ 116-15. Licensing of certain nonpublic post-secondary educational institutions.

The General Assembly of North Carolina in recognition of the importance of higher education and of the particular significance attached to the personal credentials accessible through higher education and in consonance with statutory law of this State making unlawful any "unfair or deceptive acts or practices in the conduct of any trade or commerce," hereby declares it the policy of this State that all institutions conducting post-secondary degree activity in this State that are not subject to Chapter 115 or 115D of the General Statutes, nor some other section of Chapter 116 of the General Statutes shall be subject to licensure under this section except as the institution or a particular activity of the institution may be exempt from licensure by one or another provision of this section.

(a) Definitions. — As used in this section the following terms are defined as set forth in this subsection:

- (1) "Post-secondary degree". A credential conferring on the recipient thereof the title of "Associate", "Bachelor", "Master", or "Doctor", or an equivalent title, signifying educational attainment based on (i) study, (ii) a substitute for study in the form of equivalent experience or achievement testing, or (iii) a combination of the foregoing; provided, that "post-secondary degree" shall not include any honorary degree or other so-called "unearned" degree.
- (2) "Institution". Any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or university that engages in, purports to engage in, or intends to engage in any type of post-secondary degree activity.

- (3) "Post-secondary degree activity". Any of the following is "post-secondary degree activity":
- (i) Awarding a post-secondary degree.
 - (ii) Conducting or offering study, experience, or testing for an individual or certifying prior successful completion by an individual of study, experience, or testing, under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a post-secondary degree.
- (4) "Publicly registered name". The name of any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or institution that appears as the subject of any Articles of Incorporation, Articles of Amendment, or Certificate of Authority to Transact Business or to Conduct Affairs, properly filed with the Secretary of State of North Carolina and currently in force.
- (5) "Board". The Board of Governors of The University of North Carolina.

(b) Required License. — No institution subject to this section shall undertake post-secondary degree activity in this State, whether through itself or through an agent, unless the institution is licensed as provided in this section to conduct post-secondary degree activity or is exempt from licensure under this section as hereinafter provided.

(c) Exemption from Licensure. — Any institution that has been continuously conducting post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1972, shall be exempt from the provisions for licensure under this section upon presentation to the Board of information acceptable to the Board to substantiate such post-secondary degree activity and public registration of the institution's names. Any institution that, pursuant to a predecessor statute to this subsection, had presented to the Board proof of activity and registration such that the Board granted exemption from licensure, shall continue to enjoy such exemption without further action by the Board.

(d) Exemption of Institutions Relative to Religious Education. — Notwithstanding any other provision of this section, no institution shall be subject to licensure under this section with respect to post-secondary degree activity based upon a program of study, equivalent experience, or achievement testing the institutionally planned objective of which is the attainment of a degree in theology, divinity, or religious education or in any other program of study, equivalent experience, or achievement testing that is designed by the institution primarily for career preparation in a religious vocation. This exemption shall be extended to any institution with respect to each program of study, equivalent experience, and achievement test that the institution demonstrates to the satisfaction of the Board should be exempt under this subsection.

(e) Post-secondary Degree Activity within the Military. — To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section.

(f) Standards for Licensure.— To receive a license to conduct post-secondary degree activity in this State, an institution shall satisfy the Board that the institution has met the following standards:

- (1) That the institution is State-chartered. If chartered by a state or sovereignty other than North Carolina, the institution shall also obtain a Certificate of Authority to Transact Business or to Conduct Affairs in North Carolina issued by the Secretary of State of North Carolina;
- (2) That the institution has been conducting post-secondary degree activity in a state or sovereignty other than North Carolina during consecutive, regular-term, academic semesters, exclusive of summer sessions, for at least the two years immediately prior to submitting an application for licensure under this section, or has been conducting with enrolled students, for a like period in this State or some other state or sovereignty, post-secondary educational activity not related to a post-secondary degree; provided, that an institution may be temporarily relieved of this standard under the conditions set forth in subsection (i), below;
- (3) That the substance of each course or program of study, equivalent experience, or achievement test is such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered or to be certified as successfully completed;
- (4) That the institution has adequate space, equipment, instructional materials, and personnel available to it to provide education of good quality;
- (5) That the education, experience, and other qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive, or will be reliably certified to have received, education consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution;
- (6) That the institution provides students and other interested persons with a catalog or brochure containing information describing the substance, objectives, and duration of the study, equivalent experience, and achievement testing offered, a schedule of related tuition, fees, and all other necessary charges and expenses, cancellation and refund policies, and such other material facts concerning the institution and the program or course of study, equivalent experience, and achievement testing as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures that may be specified by the Board; and that such information is provided to prospective students prior to enrollment;
- (7) That upon satisfactory completion of study, equivalent experience, or achievement test, the student is given appropriate educational credentials by the institution, indicating that the relevant study, equivalent experience, or achievement testing has been satisfactorily completed by the students;
- (8) That records are maintained by the institution adequate to reflect the application of relevant performance or grading standards to each enrolled student;

- (9) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises of the institution;
- (10) That the institution is financially sound and capable of fulfilling its commitments to students;
- (11) That the institution, through itself or those with whom it may contract, does not engage in promotion, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;
- (12) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, instructors, and employees of the institution have no record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution;
- (13) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate;
- (14) That the institution has a fair and equitable cancellation and refund policy; and
- (15) That no person or agency with whom the institution contracts has a record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution.

(g) Review of Licensure. — Any institution that acquires licensure under this section shall be subject to review by the Board to determine that the institution continues to meet the standard for licensure of subsection (f), above. Review of such licensure by the Board shall always occur if the institution is legally reconstituted, or if ownership of a preponderance of all the assets of the institution changes pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements, or if two years has elapsed since licensure of the institution was granted by the Board.

Notwithstanding the foregoing paragraph, if an institution has continued to be licensed under this section and continuously conducted post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1979, or for six consecutive years, whichever is the shorter period, and is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation, such institution shall be subject to licensure review by the Board every six years to determine that the institution continues to meet the standard for licensure of subsection (f), above. However, should such an institution cease to maintain the specified accreditation, become legally reconstituted, have ownership of a preponderance of all its assets transferred pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements to a person or organization not licensed under this section, or fail to meet the standard for licensure of subsection (f), above, then the institution shall be subject to licensure review by the Board every two years until a license to conduct post-secondary degree activity and the requisite accreditation have been restored for six consecutive years.

(h) Denial and Revocation of Licensure. — Any institution seeking licensure under the provisions of this section that fails to meet the licensure requirements of this section shall be denied a license

to conduct post-secondary degree activity in this State. Any institution holding a license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies.

(i) **Regulatory Authority in the Board.** — The Board shall have authority to establish such rules, regulations, and procedures as it may deem necessary or appropriate to effect the provisions of this section. Such rules, regulations, and procedures may include provision for the granting of an interim permit to conduct post-secondary degree activity in this State to an institution seeking licensure but lacking the two-year period of activity prescribed by subsection (f)(2), above.

(j) **Enforcement Authority in the Attorney General.** — The Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(k) **Severability.** — The provisions of this section are severable, and, if any provision of this section is declared unconstitutional or invalid by the courts, such declaration shall not affect the validity of the section as a whole or any provision other than the provision so declared to be unconstitutional or invalid. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3; 1975, c. 268; 1977, c. 563, ss. 1-4; 1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983 (Reg. Sess., 1984), c. 1006.)

Editor's Note. — Chapter 115, referred to in this section, was rewritten by Session Laws 1981, c. 423, s. 1, and has been recodified as Chapter 115C.

Effect of Amendments. — The 1983

(Reg. Sess., 1984) amendment, effective October 1, 1984, rewrote this section.

Legal Periodicals. — For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

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

Editor's Note. — Session Laws 1985, c. 479, ss. 79 to 81, provide:

"Sec. 79. Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, G.S. 116-21, and G.S. 116-22. These funds shall provide up to three hundred dollars (\$300.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

"These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy

North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in the following section of this act."

"Sec. 80. In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, the sum of

nine hundred fifty dollars (\$950.00) per academic year, which shall be distributed to the student as hereinafter provided.

"The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority may not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

"In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the 10th classroom day following the beginning of the school

term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

"In the event there are not sufficient funds to provide each eligible student with a full grant, each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation. Any remaining funds shall revert to the General Fund."

"Sec. 81. Expenditures made pursuant to Sections 79 and 80 of this act may be used only for secular educational purposes at nonprofit institutions of higher education."

§ 116-21. Contract forms; reports; audits; regulations.

Editor's Note. — Session Laws 1985, c. 479, ss. 79 and 81, provide:

"Sec. 79. Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, G.S. 116-21, and G.S. 116-22. These funds shall provide up to three hundred dollars (\$300.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

"These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of ac-

counts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in the following section of this act."

"Sec. 81. Expenditures made pursuant to Sections 79 and 80 of this act may be used only for secular educational purposes at nonprofit institutions of higher education."

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

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

- (2) "Student" shall mean a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University of North Carolina may promulgate. The enrollment figures re-

quired by G.S. 116-19 through 116-22 shall be the number of full-time equivalent students as computed under regulations prescribed by the Board of Governors of the University of North Carolina. Qualification for in-State tuition under G.S. 116-143.3 makes a person a "student" as defined in this subdivision. (1971, c. 744, s. 4; c. 1244, s. 5; 1983 (Reg. Sess., 1984), c. 1034, s. 59.)

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

Editor's Note. — Session Laws 1985, c. 479, ss. 79 to 81, provide:

"Sec. 79. Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, G.S. 116-21, and G.S. 116-22. These funds shall provide up to three hundred dollars (\$300.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

"These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in the following section of this act."

"Sec. 80. In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, the sum of nine hundred fifty dollars (\$950.00) per academic year, which shall be distributed to the student as hereinafter provided.

"The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State

Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority may not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

"In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the 10th classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

"In the event there are not sufficient funds to provide each eligible student with a full grant, each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation. Any remaining funds shall revert to the General Fund."

"Sec. 81. Expenditures made pursuant to Sections 79 and 80 of this act may be used only for secular educational purposes at nonprofit institutions of higher education."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added the last sentence of subdivision (2).

Part 3. Constituent Institutions.

§ 116-31. Membership of the boards of trustees.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 50(d), provides: "Notwithstanding the provisions of G.S. 116-31, the Board of Trustees of the North Carolina School of Science

and Mathematics shall be as provided in G.S. 115C-223 as amended by this section [s. 50 of c. 1034]." Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

CASE NOTES

Applied in *Uzzell v. Friday*, 592 F. Supp. 1502 (M.D.N.C. 1984).

§ 116-34. Duties of chancellor of institution.

CASE NOTES

Applied in *Uzzell v. Friday*, 592 F. Supp. 1502 (M.D.N.C. 1984).

§ 116-36.4. Vending facilities.

The Board of Governors shall, not later than October 1 of each year, make an itemized annual report in a format to be determined by the Office of State Budget and Management to the Joint Legislative Commission on Governmental Operations concerning the receipts, expenditures, and use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1 through G.S. 116-36.3. A similar quarterly report shall be made within 60 days after the end of each quarter. Net proceeds may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. (1983 (Reg. Sess., 1984), c. 1034, s. 172.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 175, makes this section effective Oct. 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Part 4A. Distinguished Professors Endowment Trust Fund.

§ 116-41.13. Distinguished Professors Endowment Trust Fund; purpose.

The General Assembly of North Carolina recognizes that the public university system would be greatly strengthened by the addition of distinguished scholars. It further recognizes that private as well as State support is preferred in helping to obtain distinguished scholars for the State universities and that private support will help strengthen the commitment of citizens and organizations in promoting excellence throughout all State universities. It is the intent of the General Assembly to establish a trust fund to provide

the opportunity to each State university to receive and match challenge grants to create endowments for selected distinguished professors to occupy chairs within the university. The associated foundations that serve the universities shall solicit and receive gifts from private sources to provide for matching funds to the trust fund challenge grants for the establishment of endowments for chairs within universities. (1985, c. 757, s. 202.)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this Part effective July 1, 1985.

§ 116-41.14. Distinguished Professors Endowment Trust Fund; establishment; maintenance.

There is established a Distinguished Professors Endowment Trust Fund to be maintained by the Board to provide challenge grants to the constituent institutions. All appropriated funds deposited into the trust fund shall be invested pursuant to G.S. 116-36. Interest income accruing to that portion of the trust fund not matched shall increase the total funds available for challenge grants. (1985, c. 757, s. 202.)

§ 116-41.15. Distinguished Professors Endowment Trust Fund; allocation; administration.

The amount appropriated to the trust shall be allocated by the Board as follows:

- (1) On the basis of one three hundred thirty-four thousand dollar (\$334,000) challenge grant for each six hundred sixty-six thousand dollars (\$666,000) raised from private sources; or
- (2) On the basis of one one hundred sixty-seven thousand dollar (\$167,000) challenge grant for each three hundred thirty-three thousand dollars (\$333,000) raised from private sources.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision (1) or subdivision (2) of this section, the funds shall be matched on a two-to-one basis. Matching funds shall come from contributions made after July 1, 1985, and pledged for the purposes specified by G.S. 116-36.6. Each participating constituent institution's board of trustees shall establish its own Distinguished Professors Endowment Trust Fund, and shall maintain it pursuant to the provision of G.S. 116-36 to function as a depository for private contributions and for the State matching funds for the challenge grants. The State matching funds shall be transferred to the constituent institution's Endowment Fund upon notification that the institution has received and deposited the appropriate amount required by this section in its own Distinguished Professors Endowment Trust Fund. Only the net income from that account shall be expended in support of the distinguished professorship thereby created. (1985, c. 757, s. 202.)

§ 116-41.16. Distinguished Professors Endowment Trust Fund; contribution commitments.

Contributions may also be eligible for matching if there is:

- (1) A commitment to make a donation of at least six hundred sixty-six thousand dollars (\$666,000), as prescribed by G.S. 143-31.4, and an initial payment of one hundred eleven thousand dollars (\$111,000) to receive a grant described in G.S. 116-36.7(1); or
- (2) A commitment to make a donation of at least three hundred thirty-three thousand dollars (\$333,000), as prescribed by G.S. 143-31.4, and an initial payment of fifty-five thousand five hundred dollars (\$55,500) to receive a grant described in G.S. 116-36.7(2);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-36.9, the institution shall proceed to implement plans for establishing an endowed chair. (1985, c. 757, s. 202.)

§ 116-41.17. Distinguished Professors Endowment Trust Fund; establishment of chairs.

When the sum of the challenge grant and matching funds in the Scholars' Endowment Trust Fund reaches:

- (1) One million dollars (\$1,000,000), if the sum of funds described in G.S. 116-36.7(1); or
- (2) Five hundred thousand dollars (\$500,000), if the sum of funds described in G.S. 116-36.7(2);

the board of trustees may recommend to the Board, for its approval, the establishment of an endowed chair or chairs. The Board, in considering whether to approve the recommendation, shall include in its consideration the programs already existing in The University of North Carolina. If the Board approves the recommendation, the chair or chairs shall be established. The chair or chairs, the property of the constituent institution, may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the board of trustees. (1985, c. 757, s. 202.)

§ 116-41.18. Distinguished Professors Endowment Trust Fund; selection of Distinguished Professors.

Each constituent institution that receives, through private gifts and an allocation by the Board of Governors, funds for the purpose shall, under procedures established by rules of the Board of Gover-

nors and the board of trustees of the constituent institution, select a holder of the Distinguished Professorship. Once given, that designation shall be retained by the distinguished professor as long as he remains in the full-time service of the institution. When a distinguished professorship becomes vacant, it shall remain assigned to the institution and another distinguished professor shall be selected under procedures established by rules of the Board of Governors and the board of trustees of the constituent institution.

(b) The Board of Governors of The University of North Carolina shall promulgate rules to implement this section.

(c) There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of two million dollars (\$2,000,000) for fiscal year 1985-86, and the sum of two million dollars (\$2,000,000) for fiscal year 1986-87, to implement this section. (1985, c. 757, s. 202.)

§ 116-41.19. Distinguished Professors Endowment Trust Fund; promulgation of rules.

The Board of Governors of The University of North Carolina shall promulgate rules to implement this Part. (1985, c. 757, s. 202.)

Part 6. Traffic and Parking.

§ 116-44.4. (Effective July 1, 1986) Regulation of traffic and parking and registration of motor vehicles.

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

(b) Each board of trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the board of trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the board of trustees. The board of trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this Part.

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

(d) Each board of trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students,

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

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

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

(g) Violation of an ordinance adopted under any portion of this Part is an infraction as defined in G.S. 14-3.1 and is punishable by a penalty of not more than fifty dollars (\$50.00). An ordinance may provide that certain prohibited acts shall not be infractions and in such cases the provisions of subsection (h) may be used to enforce the ordinance.

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

(i) An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether a constituent institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:

- a. Provide by contract or ordinance for a schedule of reasonable towing fees,
- b. Provide a procedure for a prompt fair hearing to contest the towing,
- c. Provide for an appeal to district court from that hearing,
- d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
- e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(j) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the board of trustees is prima facie evidence that the vehicle was parked by:

- (1) The person holding a University parking permit for the vehicle, or
- (2) If no University parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the University pursuant to subsection (c), or
- (3) If no University parking permit has been issued for the vehicle and the vehicle is not registered with the University, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subsection applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the board of trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(k) Each board of trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(l) All ordinances adopted under this Part shall be recorded in the minutes of the board of trustees and copies thereof shall be filed in the offices of the President of the University of North Carolina and the Secretary of State. Each board of trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(m) All moneys received pursuant to this Part shall be placed in a trust account in each constituent institution and may be used for any of the following purposes:

- (1) To defray the cost of administering and enforcing ordinances adopted under this Part;
- (2) To develop, maintain, and supervise parking areas and facilities;
- (3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
- (4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;
- (5) Other purposes related to parking, traffic, and transportation on the campus. (1973, c. 495, s. 1; 1975, c. 716, s. 5; 1981 (Reg. Sess., 1982), c. 1239, s. 3; 1983, c. 420, s. 5; 1985, c. 764, s. 36.)

For this section as in effect until July 1, 1986, see the main volume.

Editor's Note. —

Session Laws 1985, c. 764, s. 40 provides that offenses committed before the effective date of the act (July 1, 1986) shall be governed by the law in effect at the time of the offense.

The references to § 20-141(f1) and (g2) in subsection (b) of this section are to subsections existing prior to the 1973 amendment of § 20-141.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1986, and applicable to offenses committed on or after that date, rewrote subsection (g).

ARTICLE 3.

Community Colleges.

§ 116-53. Appropriations by State.

Cross References. — For provision that notwithstanding subsection (b) of this section, appropriations by the State for capital or permanent improvements for community colleges and technical institutes may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes, see § 115D-31(a)(1).

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 36, provides, inter alia:

"Notwithstanding the matching requirements in G.S. 116-53(b) and G.S. 115D-31, the matching requirements for the institutions receiving capital appropriations in this paragraph shall be as follows:

"(1) No institution shall be required to match State appropriations for capital projects until the funds expended for capital projects from State appropriations (excluding vocational education funds) equal expenditures from local funds;

"(2) Funds appropriated to Isothermal Community College for the Polk County satellite and to Central Carolina Technical Institute for a classroom, lab, and shop building shall be matched dollar for dollar with cash expenditures; and

"(3) Funds appropriated to house a regional program at Southwestern Technical College shall not require a local match.

"Also, the sum of one hundred thousand dollars (\$100,000) shall be allocated by the State Board of Commu-

nity Colleges to fund feasibility studies for proposed new capital projects.

"The sum of three million five hundred thirty thousand dollars (\$3,530,000) allocated to Southwestern Technical College in this section shall be used to construct a Regional Allied Health and Geriatrics Training Center. The Center will serve a regional, multi-county area in Western North Carolina; therefore, this allocation is exempt from matching requirements in accordance with G.S. 116-53(b) and G.S. 115D-31. A committee consisting of the Chancellor of Western Carolina University, the Presidents of Southwestern Technical College, Haywood Technical College, and Tri-County Community College, or their designees, and two faculty members of Western Carolina University shall coordinate the services offered by the Center to avoid overlapping and duplicative efforts involving allied health and geriatrics training by these four institutions."

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 110.1, provides:

"Notwithstanding the matching requirements in Section 36 of Chapter 1034 of the 1983 Session Laws, Tri-County Community College shall not be required to provide matching funds for capital appropriations as allocated to the Tri-County Community College in Section 36 of Chapter 1034 of the 1983 Session Laws."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and c. 1116, s. 115, are severability clauses.

ARTICLE 4.

*North Carolina School of the Arts.***§ 116-66. Powers of various boards.**

The Board of Governors of the University of North Carolina and the Board of Trustees of the school shall be advised and assisted by the State Board of Education. Entrance requirements shall be prescribed so that the professional training offered shall be available only to those students who possess exceptional talent in the performing arts. In developing curricula the school shall utilize, pursuant to agreement with institutions of higher education or with any local administrative school unit, existing facilities and such academic nonarts courses and programs of instruction as may be needed by the students of the school, and, in the discretion of the Board of Governors, personnel may be employed jointly with any such institution or unit on a cooperative, cost-sharing basis. Curricula below the collegiate level shall be developed with the advice and approval of the State Board of Education. The school shall confer and cooperate with the Southern Regional Education Board and with other regional and national organizations to obtain wide support and to establish the school as the center in the South for the professional training and performance of artists. The chancellor of the school shall preferably be a noted composer or dramatist. (1963, c. 1116; 1971, c. 1244, s. 13; 1985, c. 101, s. 2.)

Effect of Amendments. — The 1985 amendment, effective April 18, 1985, deleted "and by the advisory board of the school" at the end of the first sentence

and "and in consultation with the advisory board of the school" at the end of the fourth sentence.

§ 116-67: Repealed by Session Laws 1985, c. 101, s. 1, effective April 18, 1985.

ARTICLE 5.

Loan Fund for Prospective College Teachers.

§§ 116-74.1 to 116-74.5: Reserved for future codification purposes.

ARTICLE 5A.

Center for Advancement of Teaching.

§ 116-74.6. North Carolina Center for the Advancement of Teaching established; powers and duties of trustees.

The sums of five hundred thousand dollars (\$500,000) in fiscal year 1985-86 and two million dollars (\$2,000,000) in fiscal year

1986-87 that are appropriated to the Board of Governors of The University of North Carolina in Section 2 of the 1985-87 Current Operations Appropriations Act shall be used to establish the North Carolina Center for the Advancement of Teaching at Western Carolina University in Jackson County. The Center shall operate under the general auspices of The University of North Carolina Board of Governors. It shall be the function of the North Carolina Center for the Advancement of Teaching (hereinafter called "NCCAT"), through itself or agencies with which it may contract, to provide career teachers with opportunities to study advanced topics in the sciences, arts, and humanities and to engage in informed discourse, assisted by able mentors and outstanding leaders from all walks of life; and otherwise to offer opportunity for teachers to engage in scholarly pursuits, through a center dedicated exclusively to the advancement of teaching as an art and as a profession.

The Board of Governors of The University of North Carolina shall establish the North Carolina Center for the Advancement of Teaching Board of Trustees and shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of NCCAT. (1985, c. 479, s. 74.)

Editor's Note. — Session Laws 1985, c. 479, s. 231 makes this Article effective July 1, 1985.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

§ 116-74.7. Composition of board of trustees; terms; officers.

(a) The NCCAT Board of Trustees shall be composed of the following membership:

- (1) Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University;
- (2) Two members appointed by the General Assembly upon the recommendation of the President of the Senate;
- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (4) Eight members appointed by the Board of Governors, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new chairman every two years from its membership. The Chairman may serve two consecutive two-year terms as chairman.

The chief administrative officer of NCCAT shall be a director, who shall be appointed by the NCCAT Board of Trustees. (1985, c. 479, s. 74.)

ARTICLE 14.

*General Provisions as to Tuition and Fees in
Certain State Institutions.***§ 116-143.1. Provisions for determining resident
status for tuition purposes.**

Editor's Note. — Session Laws 1985, c. 479, s. 78(e), provides:

"Any member of the armed services as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes as defined under G.S. 116-143.1, is eligible for a Legisla-

tive Tuition Grant pursuant to this section if the member is enrolled as a full-time student in an on-campus program. The member's Legislative Tuition Grant may not exceed the cost of tuition less any tuition assistance paid by the member's employer."

§ 116-143.3. Tuition of personnel in the armed services.

(a) For purposes of this section the term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing. The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(b) Any member of the armed services qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the out-of-State tuition rate; provided, that the out-of-State tuition shall be forgiven to the extent that the out-of-State tuition rate exceeds any amounts payable to the institution or the service member by the service member's employer by reason of enrollment pursuant to such admission while the member is abiding in this State incident to active military duty, plus the amount that represents the percentage of the out-of-State tuition rate paid to the institution or the service member by the service member's employer multiplied by the in-State tuition rate and then subtracted from the in-State tuition rate.

(c) Any dependent relative of a member of the armed services who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the North Carolina Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the armed services removes his abode from North Carolina during an academic year, the dependent relative shall continue to be eligible for the in-State tuition rate during the remainder of that academic year.

(d) The burden of proving entitlement to the benefit of this section shall lie with the applicant therefor.

(e) A person charged less than the out-of-State tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefits of G.S. 116-143.1(g), (h), (i), (j), (k), or (l). (1983 (Reg. Sess., 1984), c. 1034, s. 57; 1985, c. 39, s. 1; c. 479, s. 69; c. 757, s. 154.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this section effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 78(e), provides:

"Any member of the armed services as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes as defined under G.S. 116-143.1, is eligible for a Legislative Tuition Grant pursuant to this section if the member is enrolled as a full-time student in an on-campus program. The member's Legislative Tuition Grant may not exceed the cost of tuition less any tuition assistance paid by the member's employer."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. — The 1985 amendment by c. 39, effective March 29, 1985, and applicable to tuition scholar-

ships and charges beginning in the 1985-86 academic year, inserted the present second sentence of subsection (c).

The 1985 amendment by c. 479, s. 69, effective July 1, 1985, and applicable to tuition charges beginning with the 1985-86 academic year, as amended by c. 757, s. 154, also effective July 1, 1985, rewrote subsection (b), which formerly read "Any member of the armed services, upon qualification for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3), shall be eligible to be charged the in-State tuition rate at that institution while abiding in this State incident to active military duty," in subsection (c) inserted "who is abiding in this State incident to active military duty" near the beginning of the first sentence and substituted "shall be eligible to be charged the in-State tuition rate" for "shall be accorded the benefit available to that member pursuant to subsection (b) above" in that sentence, and in subsection (e) substituted "charged less than the out-of-State tuition rate" for "receiving the in-State tuition benefit."

ARTICLE 18.

Scholarship Loan Fund for Prospective Teachers.

§§ 116-171 to 116-174: Transferred to §§ 115C-468 to 115C-471 by Session Laws 1983 (Regular Session 1984), c. 1034, s. 10.1, effective July 1, 1984.

ARTICLE 28.

North Carolina-Israel Visiting Scholar Program.

§ 116-230. North Carolina-Israel Visiting Scholar Program.

(a) There is created the North Carolina-Israel Visiting Scholar Program for the purpose of granting funds to members of the faculties of the constituent institutions of The University of North Carolina and institutions of higher education in Israel to assist in their travel and living expenses while participating in the program.

(b) The President of The University of North Carolina shall appoint a North Carolina Committee to work with a committee from Israel to prepare proper guidelines for the administration of the program and to establish criteria for the designation of participating scholars.

(c) Funds for the support of this program shall come from private sources, and grants shall be made for as many suitable recipients as can be found within budget limitations. (1985, c. 757, s. 81(c).)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this Article effective July 1, 1985.

ARTICLE 29.

The North Carolina School of Science and Mathematics.

§ 116-230.1. Policy.

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills in science and mathematics among the people of the State. (1985, c. 757, s. 206(b).)

Editor's Note. — Session Laws 1985, c. 757, s. 206(g) makes this Article effective upon ratification. The act was ratified July 15, 1985.

§ 116-231. Reestablishment of the North Carolina School of Science and Mathematics as an Affiliated School of The University of North Carolina.

The North Carolina School of Science and Mathematics is hereby reestablished, as an affiliated school of The University of North Carolina, and shall be governed by a Board of Trustees as prescribed in this Article. (1985, c. 757, s. 206(b).)

§ 116-232. Purposes.

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; to develop, evaluate, and disseminate experimental instructional programs; and to serve all schools of the State through research and outreach activities. (1985, c. 757, s. 206(b).)

§ 116-233. Board of Trustees; appointment; terms of office.

(a) There shall be a Board of Trustees of the School, which shall consist of 25 members:

- (1) Eleven members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district;
- (2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina;
- (3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter;
- (4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter;
- (5) Two members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
- (6) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and
- (7) Two members appointed by the Governor.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties.

(c) No member of the General Assembly or officer or employee of the State or of the School or of any constituent institution of The University of North Carolina, or the spouse of any such member, officer or employee, shall be eligible to be appointed to the Board of Trustees; and any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, of the School, or of a constituent institution of The University of North Carolina, or whose spouse is elected or appointed to the General Assembly or becomes such an officer or employee, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Seven of the initial class of members of the Board of Trustees appointed under G.S. 116-233[(a)](1) and (2) shall be chosen for a term of two years to expire June 30, 1987, and eight shall be chosen for a term of four years to expire June 30, 1989; thereafter, all such members shall be elected to four-year terms. No person other than

an ex officio member shall be eligible to serve more than two successive terms. Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233[(a)](1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233[(a)](5) or (6) shall be filled in accordance with G.S. 120-122. Any vacancy in members appointed under G.S. 116-233[(a)](7) shall be filled by the Governor for the remainder of the unexpired term.

(e) Of the initial members appointed under G.S. 116-233[(a)](5), one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233[(a)](6), shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233[(a)](7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. (1985, c. 757, s. 206(b).)

Editor's Note. — The letter "(a)" has been inserted in brackets in the internal references in subsections (d) and (e) of this section, which were apparently in-

tended to refer to subdivisions (a)(1), (a)(2), (a)(5), (a)(6) and (a)(7) of this section.

§ 116-234. Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least four times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) The Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233[(a)](3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233[(a)](3) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b).)

Editor's Note. — The letter "(a)" has been inserted in brackets in the internal references in subsection (d), which were

apparently intended to refer to subdivision (a)(3) of § 116-233.

§ 116-235. Board of Trustees; powers and duties.**(a) Academic Program. —**

- (1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.
- (2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. —

- (1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be a legal resident of the State, as defined by G.S. 116-143.1; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a non-resident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts.
- (2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days, or both, in the discretion of the court. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.
- (3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Director, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) Personnel. —

- (1) Faculty Members. — Members of the faculty of the School shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt all policies and regulations governing the qualifications, criteria for employment, assignment, health requirements, terms and

conditions of employment, compensation and benefits, and the supervision and management of all faculty members of the School, and such system of employment and employment security as the Board of Trustees may deem to be appropriate.

- (2) Senior Administrative Officers. — The senior administrative officers of the School shall consist of a Director, as provided by G.S. 116-236, and such other senior academic and administrative officers as shall be selected and employed by the Board of Trustees. They shall be governed by such policies and regulations and provisions for compensation as the Board of Trustees may adopt, and shall be exempt from the State Personnel Act.
- (3) Other Employees. — All other employees of the School shall be subject to the State Personnel Act and to such supplemental policies and regulations, not inconsistent therewith, as may be adopted by the Board of Trustees.
- (4) All employees of the School shall be deemed to be employees of the State and shall be covered by all provisions of State law relevant thereto, including Chapter 97, Chapter 135, and Article 31A of Chapter 143 of the General Statutes.

(d) Finances, Property, Obligations. —

- (1) The Board of Trustees shall develop, prepare, and present to the Board of Governors a recommended budget for the School, which shall be transmitted by the Board of Governors to the General Assembly.
- (2) Subject to all applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Trustees may acquire, hold, convey or otherwise dispose of, and invest or reinvest any and all real and personal property, except that the Board of Trustees may not convey any of the land constituting the campus, except for necessary easements, without the approval of the General Assembly. All power and authority exercised with regard to the acquisition, operation, maintenance, and disposition of real and personal property shall be subject to the provisions of Chapters 143 and 146 of the General Statutes except as provided in G.S. 116-238.
- (3) The Board of Trustees is authorized to accept, receive, and use any federal funds, or aids, that may be made available by the federal government which, in the judgment of the Board of Trustees, would be beneficial to the operation of the School.
- (4) The Board of Trustees is authorized to establish a permanent endowment fund as provided in G.S. 116-238.
- (5) The lands and other property of the School shall be exempt from all kinds of public taxation, except as may be provided for by State law.
- (6) The Board of Trustees may establish policies and regulations for the sale of goods and services, not inconsistent with the provisions of Article 11 of Chapter 66 of the General Statutes.

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

- (1) Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this subsection:
 - a. "Board of Trustees" means the Board of Trustees of the North Carolina School of Science and Mathematics.
 - b. "Campus" means that School property, without regard to location, which is used wholly or partly for the purposes of the North Carolina School of Science and Mathematics.
 - c. "School property" means property owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Trustees of the North Carolina School of Science and Mathematics.
- (2) Except as otherwise provided in this subsection, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structure on School property. Nothing in this subsection modifies any rights of ownership or control of School property, now or hereafter vested in the Board of Trustees or the State of North Carolina.
- (3) The Board of Trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the Board of Trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the Board of Trustees. The Board of Trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this section.
- (4) The Board of Trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the School, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.
- (5) The Board of Trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the School and members of the general public attending schools, conferences, or meetings at the School, visiting or making use of any School facilities, or attending to official business with the School. The Board of Trustees may issue permits to park in these lots and garages and may charge a fee therefor. The Board of Trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.
- (6) The Board of Trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the Board of Trustees may

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

- (7) The Board of Trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.
- (8) Violation of an ordinance adopted under any portion of this subsection is a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days, in the discretion of the court. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.
- (9) An ordinance adopted under any portion of this subsection may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. The Board of Trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The Board of Trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the School.
- (10) An ordinance adopted under any portion of this subsection may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether the School does its own removal and disposal of motor vehicles or contracts with another person to do so, the School shall provide a hearing procedure for the owner. For purposes of this subdivision, the definitions in G.S. 20-219.9 apply.
 - a. If the School operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
 - b. If the School operates in such a way that it is responsible for collecting towing fees, it shall:
 1. Provide by contract or ordinance for a schedule of reasonable towing fees,
 2. Provide a procedure for a prompt fair hearing to contest the towing,
 3. Provide for an appeal to district court from that hearing,

4. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 5. If the School chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the School may destroy it.
- (11) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the Board of Trustees is prima facie evidence that the vehicle was parked by:
- a. The person holding a School parking permit for the vehicle, or
 - b. If no School parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the School pursuant to subdivision (3), above, or
 - c. If no School parking permit has been issued for the vehicle and the vehicle is not registered with the School, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subdivision (11) applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the Board of Trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

- (12) The Board of Trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.
- (13) All ordinances adopted under this subsection shall be recorded in the minutes of the Board of Trustees and copies thereof shall be filed in the office of the Secretary of State. The Board of Trustees shall provide for printing and distributing copies of its traffic and parking ordinances.
- (14) All moneys received pursuant to this subsection shall be placed in a trust account of the School and may be used for any of the following purposes:
- a. To defray the cost of administering and enforcing ordinances adopted under this subsection;
 - b. To develop, maintain, and supervise parking areas and facilities;
 - c. To fulfill other purposes related to parking, traffic, and transportation on the campus.

(f) Status as a Body Politic and Corporate. — The Board of Trustees of the School is hereby made a body corporate and politic, to be known and distinguished as "The Board of Trustees of the North Carolina School of Science and Mathematics." The Board of Trustees shall be capable in law to sue and be sued and of prosecuting and defending suits for or against the corporation, subject to the provisions of G.S. 114-2 and G.S. 147-17.

(g) The Board of Trustees may adopt such other policies and regulations as it may consider necessary and expedient for the opera-

tion and management of the affairs of the School, not inconsistent with the provisions of this Article.

(h) The Board of Trustees shall keep the Board of Governors fully and promptly informed, through the President of The University of North Carolina, concerning activities of the Board of Trustees, including notices of meetings and copies of the minutes of all such meetings. (1985, c. 757, s. 206(b).)

Editor's Note. — The references to § 20-141(f1) and (g2) in subdivision (e)(3) of this section are to subsections existing prior to the 1973 amendment of § 20-141.

§ 116-236. Director of the School.

The chief administrative officer of the School shall be the Director, who shall be appointed by the Board of Trustees to serve at its pleasure. The Director shall administer all affairs of the School, subject to policies, rules, and regulations adopted by the Board of Trustees. The Director shall serve as the Secretary to the Board of Trustees and shall report at least annually to the Board of Trustees concerning the state of the School. (1985, c. 757, s. 206(b).)

§ 116-237. Educational Advisory Council.

The Board of Governors shall establish a 12-member Educational Advisory Council consisting of (1) ex officio, the State Superintendent of the Department of Public Instruction and the chairman of the State Board of Education, and (2) 10 persons who are scientists, mathematicians, public school representatives, or other persons having an interest in the School and desiring to contribute to its work. The members of the Advisory Council shall be appointed by the Board of Governors for four-year terms. No person shall be eligible to serve more than two successive four-year terms. The Advisory Council shall give advice and counsel to the Director and the Board of Trustees. (1985, c. 757, s. 206(b).)

§ 116-238. Endowment fund.

(a) The Board of Trustees of the School may establish and maintain, consistent with this section, an endowment fund for the School.

(b) It is not the intent of this section that the proceeds from any endowment fund shall take the place of State appropriations or any part thereof, but it is the intent of this section that those proceeds shall supplement the State appropriations to the end that the School may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(c) Pursuant to the foregoing subsections and consistent with the powers and duties prescribed in this section, the Board of Trustees of the School shall appoint an investment board to be known as "The Board of Trustees of the Endowment Fund of the North Carolina School of Science and Mathematics."

(d) The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and

any other property of any kind that may come to them from the Board of Governors of The University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from State appropriations and from tuition and fees, if any, collected from students and used for the general operation of the institution.

(e) The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.

(f) In the process of prudent investment of the fund or to realize the statutory intent of the endowment, the Board of Trustees of the endowment fund may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used. To realize the statutory intent of the endowment fund, the Board of Trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the School; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer.

(g) The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission.

(h), (i) Reserved for future codification purposes.

(j) Any gift, devise, or bequest of real or personal property to the North Carolina School of Science and Mathematics shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the School.

(k) Whenever any property of the endowment fund authorized by this section is disposed of or otherwise transferred from the endowment fund, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transferor, as the case may be, is the Board of Trustees of the endowment fund.

(l) All instruments for execution of the duly authorized business of the endowment fund, including deeds of conveyance and other documents of title to real property, are hereby authorized to be executed in the name of the endowment board by the principal officer of the Board of Trustees of the endowment fund or such other person or agent as the board may expressly appoint in a manner consistent with the requirements of law. (1985, c. 757, s. 206(b).)

Chapter 116B.

Escheats and Abandoned Property.

Article 2.

Abandoned Property.

Sec.

116B-12. Property held by financial institutions.

116B-13. Property held by life insurers.

116B-14. Property held by other insurers.

Article 3.

Administration of Abandoned Property.

Sec.

116B-29. Report of abandoned property by holder to Commissioner of Insurance or Treasurer.

116B-30. Preparation of list of owners by State Treasurer and Commissioner of Insurance.

ARTICLE 2.

Abandoned Property.

§ 116B-12. Property held by financial institutions.

(a) Deposits and Funds. — Any demand, savings or matured time deposit in a financial institution, or any funds paid toward the purchase of shares or other interest in a financial institution shall be presumed abandoned if the financial institution is unable to locate the owner and if, within the preceding five years, as to any demand deposit, or a savings or time deposit or interest having a value of one thousand dollars (\$1,000) or less, or within the preceding 10 years, as to any such savings or time deposit or interest having a value of more than one thousand dollars (\$1,000), the owner has not:

- (1) Increased or decreased the amount of the deposit, shares or claim, or presented to the holder the passbook, evidence of deposit or other appropriate record for the crediting of interest or dividends;
- (2) Corresponded in writing with the holder concerning the deposit, shares or claim; or
- (3) Otherwise indicated an interest in the deposit, shares or claim as evidenced by a writing on file with the holder.

The financial institution shall make reasonable efforts to locate the owner and to determine whether its records disclose a different address for the owner.

(1979, 2nd Sess., c. 1311, s. 1; 1985, c. 215, s. 1.)

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

Effect of Amendments. — The 1985 amendment, effective May 21, 1985, deleted "receives information that the

owner no longer resides at the address listed in the holder's records and" preceding "is unable to locate the owner" in the introductory language of subsection (a).

§ 116B-13. Property held by life insurers.

(d) Negotiable Instruments. — Any sum for the payment of a claim under an insurance policy or contract, which sum is payable on a negotiable instrument on which the insurer is the maker or drawer shall be presumed abandoned if, within 10 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

- (1) Negotiated the instrument;
- (2) Corresponded in writing with the insurer concerning it; nor
- (3) Otherwise indicated an interest by a writing on file with the insurer. (1979, 2nd Sess., c. 1311, s. 1; 1985, c. 666, s. 72.)

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

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, added subsection (d).

§ 116B-14. Property held by other insurers.

(c) Negotiable Instruments. — Any sum for the payment of a claim under an insurance policy or contract, which sum is payable on a negotiable instrument on which the insurer is the maker or drawer shall be presumed abandoned if, within five years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

- (1) Negotiated the instrument;
- (2) Corresponded in writing with the insurer concerning it; nor
- (3) Otherwise indicated an interest by a writing on file with the insurer. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 3; 1985, c. 666, s. 73.)

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

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, added subsection (c).

ARTICLE 3.

Administration of Abandoned Property.

§ 116B-29. Report of abandoned property by holder to Commissioner of Insurance or Treasurer.

(b) Contents. — The report shall be verified and shall include:

- (1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars (\$25.00) or more;
- (2) In the case of unclaimed funds of an insurer, the full name of the insured or annuitant and his last known address according to the insurer's records;
- (3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to

be due, except that items of value under twenty-five dollars (\$25.00) each may be reported in the aggregate;

(4) A certification that the property reported has been held for the period required by Article 2 of this Chapter; and

(5) Other information which the Treasurer prescribes by rule.

(e) Verification. — Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. Notwithstanding the above, any person authorized to bind the appropriate entity may make this verification.

(1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 7, 8; 1983, c. 204, s. 3; 1985, c. 215, ss. 2, 3.)

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

Effect of Amendments. —

The 1985 amendment, effective May 21, 1985, rewrote subdivision (b)(4),

which read "The date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and" and added the second sentence of subsection (e).

§ 116B-30. Preparation of list of owners by State Treasurer and Commissioner of Insurance.

(f) Confidentiality of Information. — Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This requirement shall not apply to owners of reported property making inquiries about their property to be researched by the staff of the Escheat Fund. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 9-13; 1983, c. 204, ss. 4-7; 1985, c. 215, s. 4.)

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

Effect of Amendments. —

The 1985 amendment, effective May 21, 1985, added subsection (f).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1985

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1985 Cumulative 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.

LACY H. THORNBURG
Attorney General of North Carolina