

# THE GENERAL STATUTES OF NORTH CAROLINA

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1987 CUMULATIVE SUPPLEMENT

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

*Under the Direction of*

A. D. KOWALSKY, S. C. WILLARD, W. L. JACKSON,  
K. S. MAWYER, P. R. ROANE AND S. S. WEST

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## Volume 3A, Part II

Chapters 113 to 116B

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Annotated through 356 S.E.2d 26. For complete scope of  
annotations, see scope of volume page.

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

THE MICHIE COMPANY  
*Law Publishers*  
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1987

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## Preface

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This Cumulative Supplement to Replacement Volume 3A, Part II contains the general laws of a permanent nature enacted by the General Assembly through the 1987 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.



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## Scope of Volume

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### **Statutes:**

Permanent portions of the General Laws enacted by the General Assembly through the 1987 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 319, p. 464.

North Carolina Court of Appeals Reports through Volume 85, p. 173.

South Eastern Reporter 2nd Series through Volume 356, p. 26.

Federal Reporter 2nd Series through Volume 817, p. 761.

Federal Supplement through Volume 658, p. 304.

Federal Rules Decisions through Volume 115, p. 78.

Bankruptcy Reports through Volume 72, p. 618.

Supreme Court Reporter through Volume 107, p. 2210.

North Carolina Law Review through Volume 65, p. 847.

Wake Forest Law Review through Volume 22, p. 424.

Campbell Law Review through Volume 9, p. 206.

Duke Law Journal through 1987, p. 190.

North Carolina Central Law Journal through Volume 16, p. 222.

Opinions of the Attorney General.

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## **User's Guide**

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





# The General Statutes of North Carolina 1987 Cumulative Supplement

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## VOLUME 3A, PART II

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### Chapter 113.

**Editor's Note.** — The legislation and annotations affecting Chapter 113 have been included in a recently published replacement chapter.

## Chapter 113A.

### Pollution Control and Environment.

#### Article 1.

##### Environmental Policy Act.

Sec.

- 113A-4. Cooperation of agencies; reports; availability of information.
- 113A-6. Conformity of administrative procedures to State environmental policy.

#### Article 3.

##### Natural and Scenic Rivers System.

- 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-38. Land acquisition.
- 113A-42. Violations.
- 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-56. Jurisdiction of the Commission.
- 113A-57. Mandatory standards for land-disturbing activity.
- 113A-64. Penalties.

#### Article 6.

##### North Carolina Trails System.

- 113A-88. North Carolina Trails Committee; composition; meetings and functions.
- 113A-92.1. Adopt-A-Trail Program.
- 113A-95. Liability to users of the Trails System.

#### Article 7.

##### Coastal Area Management.

###### Part 1. Organization and Goals.

- 113A-103. Definitions.

#### Part 2. Planning Processes.

Sec.

- 113A-107. State guidelines for the coastal area.

#### Part 3. Areas of Environmental Concern.

- 113A-115. Designation of areas of environmental concern.

#### Part 4. Permit Letting and Enforcement.

- 113A-118. Permit required.
- 113A-118.1. General permits.
- 113A-119. Permit applications generally.
- 113A-120. Grant or denial of permits.
- 113A-121.1. Administrative review of permit decisions.
- 113A-122. Procedures for hearings on permit decisions.
- 113A-124. Additional powers and duties.
- 113A-125. Transitional provisions.
- 113A-126. Injunctive relief and penalties.
- 113A-128. Protection of landowners' rights.

#### Article 7A.

##### Coastal and Estuarine Water Beach Access Program.

- 113A-134.3. Standards for beach access program.

#### Article 8.

##### North Carolina Land Conservancy Corporation.

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

#### Article 9.

##### Land Policy Act.

- 113A-153. North Carolina Land Policy Council.
- 113A-155. State land policy.
- 113A-156. State land classification system.
- 113A-158. Protection of rights.

#### 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 10.**

**Control of Outdoor Advertising near the Blue Ridge Parkway.**

- 113A-166. Rules.

- Sec.  
 113A-168. Removal, etc., of unlawful advertising.  
 113A-170. Violation a misdemeanor; injunctive relief.

**Article 12.**

**Primary Forest Product Assessment Act.**

- 113A-193. Duties of Secretaries.  
 113A-195. Collection of assessment.

**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).

**Editor's Note.** —

Session Laws 1987, c. 855 relates to a site for a superconducting super collider. Sections 1 to 8 of c. 855 provide: "Section 1. Purpose. The General Assembly finds that the acquisition, dedication, and use of the real property authorized to be acquired by this act for the establishment of a superconducting super collider in North Carolina will lead to the educational, scientific, and economic development of the State and its people and hereby declares such acquisition, dedication, and use to serve a public purpose and to be for the benefit of the people of the State.

"Sec. 2. Acquisition by the State. The Department of Administration may acquire for a superconducting super collider in fee simple or in any lesser interest including negative easements,

in the name of and on behalf of the State of North Carolina, by donation, purchase, or condemnation pursuant to the provisions of G.S. 146-24 and 146-24.1:

- "(1) those lands together with any improvements thereon, in Durham, Granville, and Person Counties, determined to be necessary for a site on which to locate and construct a superconducting super collider in accordance with specifications of the Secretary of the United States Department of Energy for the superconducting super collider;
- "(2) easements for roads and access to various points to and around the site;
- "(3) easements for the purpose of bringing utilities onto the site and for the distribution of utilities to service areas around the site;
- "(4) temporary easements to facilitate construction, including



easements for temporary roads; and

- "(5) off-site locations for the disposition of materials and spoils excavated from the site, and rights-of-way for access to such areas.

"The specific location of the real property to be acquired shall be determined by the Governor and the Council of State.

"Sec. 3. Acquisition by the United States; reimbursement of expenses. The United States, by condemnation or other judicial proceedings, may acquire title to any tract or parcel of land together with any improvements thereon, in Durham, Granville, and Person Counties, determined to be necessary for a site on which to locate and construct a superconducting super collider in accordance with specifications of the Secretary of the United States Department of Energy for the superconducting super collider.

"The State of North Carolina is authorized to reimburse the United States for any and all awards of just compensation that may be made in any such condemnation or judicial proceedings.

"Sec. 4. Right of entry. The Department of Administration, the United States Department of Energy, and their agents and contractors, shall have the right to enter upon any lands to make surveys, borings, examinations, and appraisals as may be necessary or required by the United States Department of Energy or the Department of Administration in connection with the selection and acquisition of a site for a superconducting super collider and for easements and other property interests necessary for the purposes of this act. Entry pursuant to this act shall not be a trespass or taking of property. The Department of Administration shall make reimbursement for any damages to real property resulting from activities authorized by this section. Any property owner shall be entitled to bring a civil action in Superior Court of the county in which the real property is located to recover for any such damages for which he has not been reimbursed.

"Sec. 5. Agreements with the United States; use of appropriated or donated funds. Notwithstanding the provisions of G.S. 146-36, and with the concurrence of the Council of State, the Governor

may enter into any contract, conveyance, or other agreement to acquire for and to convey to the United States of America land or any interest in land, and to do such other acts and things as may be necessary to implement the provisions of this act. In carrying out the provisions of this act, the Department of Administration may use funds which have been or may be appropriated for the acquisition of the site for the superconducting super collider or which may otherwise be authorized or which may have been received from gifts, devises, donations, bequests, or other sources for such purposes.

"Sec. 6. Jurisdiction. The Governor and Council of State are authorized to grant concurrent jurisdiction on behalf of the State of North Carolina to the United States of America in those lands in which an interest is held by the United States of America pursuant to this act. The State of North Carolina shall continue to exercise jurisdiction in all lands covered by this act.

"Sec. 7. Unused land to State. In the event that the superconducting super collider is not built on land conveyed to the United States by the State for that purpose, or that the scope of the project is so reduced that a portion of the land is not required, title to the property or to an appropriate portion thereof shall revert to the State of North Carolina upon the release of the property by the United States. In the event that the superconducting super collider is not built on land condemned by the United States for that purpose, or that the scope of the project is so reduced that a portion of the land is not required, title to the property or to an appropriate portion thereof shall vest in the State of North Carolina upon the release of the property by the United States.

"Sec. 8. The North Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General Statutes, shall not apply to this act or to any action taken pursuant to this act."

**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).



## CASE NOTES

Cited in *In re Environmental Mgt. Comm'n*, 80 N.C. App. 1, 341 S.E.2d 588 (1986).

### § 113A-4. Cooperation of agencies; reports; availability of information.

The General Assembly authorizes and directs that, to the fullest extent possible:

- (1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and  
(1971, c. 1203, s. 4; 1987, c. 827, s. 125.)

**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 August 13, 1987, substituted "rules" for "regulations" in subdivision (1).

**Effect of Amendments.** — The 1987

### § 113A-6. Conformity of administrative procedures to State environmental policy.

All agencies of the State shall periodically review their statutory authority, administrative rules, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the purposes and provisions of this Article and shall propose to the Governor such measures as may be necessary to bring their authority, rules, policies and procedures into conformity with the intent, purposes and procedures set forth in this Article. (1971, c. 1203, s. 6; 1987, c. 827, s. 126.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted "periodically review their" for "review their present," substituted

"rules" for "regulations," and deleted "not later than July 1, 1972" following "Governor."

## 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 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 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; 1987, c. 827, s. 127.)

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

The 1987 amendment, effective August 13, 1987, substituted "Department" for "Department of Natural Resources and Community Development" in two places in this section.

## § 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 rules 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.

(d) The Department may adopt rules to implement this Article. (1971, c. 1167, s. 2; 1973, c. 911; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1985, c. 129, s. 1; 1987, c. 827, ss. 125, 128.)

**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, effective April 26, 1985, added subsection (c1).

The 1987 amendment, effective August 13, 1987, substituted “rule” for “regulation” and “rules” for “regulations” in subsection (c1), and rewrote subsection (d).

### § 113A-38. Land acquisition.

(a) The Department of Administration is authorized to acquire for the Department, within the boundaries of a river or segment of river as set out in G.S. 113A-35 on behalf of the State of North Carolina, lands in fee title or a lesser interest in land, preferably “scenic easements.” Acquisition of land or interest therein may be by donation, purchase with donated or appropriated funds, exchange or otherwise.

(b) The Department of Administration in acquiring real property or a property interest therein as set out in this Article shall have and may exercise the power of eminent domain in accordance with Article 3 of Chapter 40A of the General Statutes, as amended. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, ss. 127, 129.)



**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted "Article 3 of Chapter 40A of the General Statutes" for "the provisions of Article 2, Chapter 40, of the General

Statutes, as amended" in subsection (b), and substituted "Department" for "Department of Natural Resources and Community Development" in subsection (a).

## § 113A-42. Violations.

(a) Civil Action. — Whoever violates, fails, neglects or refuses to obey any provision of this Article or rule or order of the Secretary of Natural Resources and Community Development may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy.

(b) Penalties. — Whoever violates, fails, neglects or refuses to obey any provision of this Article or rule or order of the Secretary of Natural Resources and Community Development is guilty of a misdemeanor and may be punished by a fine of not more than fifty dollars (\$50.00) for each violation, and each day such person shall fail to comply, where feasible, after having been officially notified by the Department shall constitute a separate offense subject to the foregoing penalty. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 125.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted "rule" for "regulation" in subsections (a) and (b).

## § 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, on ratification. The act was ratified c. 129, s. 4, makes this section effective 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

**The purpose of this Act is to control erosion and sedimentation,** rather than only land-disturbing activities. *Cox v. State ex rel. Summers*, 81 N.C. App. 612, 344 S.E.2d 808, cert. denied, 318 N.C. 413, 349 S.E.2d 592 (1986).

**Applicability of Act to Activities Occurring Before Act and Regulations Became Effective.** — To accomplish the purpose of the Act, the Act and the regulations enacted pursuant to it may be applied to land-disturbing activities which occurred before the Act and regulations became effective. *Cox v. State ex rel. Summers*, 81 N.C. App. 612, 344 S.E.2d 808, cert. denied, 318 N.C. 413, 349 S.E.2d 592 (1986).

Under this Act and the regulations

enacted pursuant thereto, the developers of land, who still owned the roadway over which lot owners had an easement, could be held responsible for permanent erosion and sediment control measures in that roadway, even though the land-disturbing activity of the developers in developing the land occurred before the effective date of the regulations in question. *Cox v. State ex rel. Summers*, 81 N.C. App. 612, 344 S.E.2d 808, cert. denied, 318 N.C. 413, 349 S.E.2d 592 (1986).

**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.*, 71 N.C. App. 779, 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 Chapter 150B 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 publica-

tions 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) Repealed by Session Laws 1987, c. 827, s. 10 effective August 13, 1987. (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; 1987, c. 827, s. 10.)

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

**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."

The 1987 amendment, effective August 13, 1987, substituted "Chapter 150B" for "the rulemaking procedures set forth in Article 2 of Chapter 150A" in the first sentence of subsection (b), and deleted the remaining three sentences of subsection (f), pertaining to incorporation of rules and regulations of the Commission into either the Secretary's official regulations or his rules of procedure, filing of rules and regulations with the Attorney General as required by Chapter 150A and with clerks of court, and availability of copies of rules and regulations upon request. In addition, the amendment directed that subdivisions (b)(1) to (b)(3) and the last paragraph of subsection (b) be deleted; these changes to subsection (b) had previously been made by Session Laws 1979, c. 922, s. 2.

#### CASE NOTES

**Applicability of Act to Activities Occurring Before Act and Regulations Became Effective.** — To accomplish the purpose of the Act, and the Act

and the regulations enacted pursuant to it may be applied to land-disturbing activities which occurred before the Act and regulations became effective. *Cox v.*

State ex rel. Summers, 81 N.C. App. 612, 344 S.E.2d 808, cert. denied, 318 N.C. 413, 349 S.E.2d 592 (1986).

Under this Act and the regulations enacted pursuant thereto, the developers of land, who still owned the roadway over which lot owners had an easement, could be held responsible for permanent erosion and sediment control measures in that roadway, even though

the land-disturbing activity of the developers in developing the land occurred before the effective date of the regulations in question. *Cox v. State ex rel. Summers*, 81 N.C. App. 612, 344 S.E.2d 808, cert. denied, 318 N.C. 413, 349 S.E.2d 592 (1986).

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

## § 113A-56. Jurisdiction of the Commission.

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- (1) Conducted by the State;
- (2) Conducted by the United States;
- (3) Conducted by persons having the power of eminent domain;
- (4) Conducted by local governments;
- (5) Licensed by the State or the United States; or
- (6) Funded in whole or in part by the State or the United States.

(1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130.)

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

**Effect of Amendments.** — The 1987

amendment, effective August 13, 1987, substituted "to adopt rules" for "for the purpose of promulgating regulations" in subsection (a).

## § 113A-57. Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one contiguous acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.
- (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; 1987, c. 827, s. 131.)



**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 1983 (Reg. Sess., 1984) amendment, effective June 28, 1984, added subdivision (4).

The 1987 amendment, effective August 13, 1987, substituted "specified by rule of" for "adopted by regulation by" near the end of subdivision (3).

## § 113A-64. Penalties.

### (a) Civil Penalties.

- (1) Any person who violates any of the provisions of this Article or any ordinance, rule, regulation, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation under G.S. 113A-64(a)(1).
- (2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S. 113A-64(a) and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this Article.
- (3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article.

(1973, c. 392, s. 15; 1977, c. 852; 1987, c. 246, 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 1987 amendment, effective June 2, 1987, added subdivision (a)(3).



## 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 6.

*North Carolina Trails System.*

## § 113A-88. North Carolina Trails Committee; composition; meetings and functions.

(d) The Secretary, with advice of the Committee, shall study trail needs and potentials, and make additions to the State Trails System as needed. He shall submit an annual report to the Governor and General Assembly on trail activities by the Department, including rights-of-way that have been established and on the program for implementing this Article. Each report shall include a short statement on the significance of the various trails to the System. The Secretary shall make such rules as to trail development, management, and use that are necessary for the proper implementation of this Article. (1973, c. 670, s. 1; c. 1262, s. 82; 1987, c. 827, s. 132.)

**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 August 13, 1987, deleted "and regulations" following "rules" in subsection (d).

**Effect of Amendments.** — The 1987

## § 113A-92.1. Adopt-A-Trail Program.

The Department shall establish an Adopt-A-Trail Program to coordinate with the Trails Committee and local groups or persons on trail development and maintenance. Local involvement shall be encouraged, and interested groups are authorized to "adopt-a-trail" for such purposes as placing trail markers, trail building, trail blazing, litter control, resource protection, and any other activities related to the policies and purposes of this Article. (1987, c. 738, s. 153(a).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 238 makes this section effective July 1, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Cur-

rent Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

## § 113A-95. Liability to users of the Trails System.

An owner, lessee, occupant, or other person in control of land who allows without compensation another person to hike or use the land for recreational purposes as established under this Article owes the person the same duty of care he owes a trespasser. (1987, c. 498, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 498, s. 2 makes this section effective October 1, 1987.

## ARTICLE 7.

### *Coastal Area Management.*

#### Part 1. Organization and Goals.

### § 113A-100. Short title.

#### **Legal Periodicals.** —

For comment, "Sunbathers Versus Property Owners: Public Access to North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

For article, "The Battle to Preserve

North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

#### CASE NOTES

Cited in Pamlico Marine Co. v. North Carolina Dep't of Natural Resources & Community Dev., 80 N.C. App. 201, 341 S.E.2d 108 (1986); Issuance of Cama

Minor Dev. Permit No. 82-0010 v. Town of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

### § 113A-102. Legislative findings and goals.

#### CASE NOTES

**Revised zoning ordinance which prohibited further development of wet and dry boat storage at marinas** was within the police power of the State and consistent with the Coastal Area Management Act. Issuance of Cama Minor Dev. Permit No. 82-0010 v. Town

of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

**Quoted** in Pamlico Marine Co. v. North Carolina Dep't of Natural Resources & Community Dev., 80 N.C. App. 201, 341 S.E.2d 108 (1986).

### § 113A-103. Definitions.

As used in this Article:

- (10) Repealed by Session Laws 1987, c. 827, s. 133, effective August 13, 1987. (1973, c. 1284, s. 1; 1981, c. 913, s. 1; 1987, c. 827, s. 133.)

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

**Effect of Amendments.** — The 1987

amendment, effective August 13, 1987, deleted subdivision (10), which defined "rule."

#### CASE NOTES

**The purpose of the exception of subparagraph (5) b 7** was to exempt projects that were already underway and were so far along in their development that to require a Coastal Area Management Act permit would be unfair and possibly a denial of constitutionally protected vested private property rights. *Pamlico Marine Co. v. North Carolina Dep't of Natural Resources & Community Dev.*, 80 N.C. App. 201, 341 S.E.2d 108 (1986).

**Applicability of Subparagraph (5)**

**b 7.** — The exception in subparagraph (5) b 7 did not apply to replacement of decking merely because original marina and pilings were built before the ratification of Coastal Area Management Act, as petitioner had to obtain a new building permit from the Town of Bath prior to building this decking, which permit was issued after the ratification of CAMA. *Pamlico Marine Co. v. North Carolina Dep't of Natural Resources & Community Dev.*, 80 N.C. App. 201, 341 S.E.2d 108 (1986).

### § 113A-104. Coastal Resources Commission.

#### CASE NOTES

**Cited in** *Pamlico Marine Co. v. North Carolina Dep't of Natural Resources &*

*Community Dev.*, 80 N.C. App. 201, 341 S.E.2d 108 (1986).

#### Part 2. Planning Processes.

### § 113A-107. State guidelines for the coastal area.

(a) State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3.

(c) The Commission shall mail proposed as well as adopted rules establishing guidelines for the coastal area to all cities, counties, and lead regional organizations within the area and to all State, private, federal, regional, and local agencies the Commission considers to have special expertise on the coastal area. A person who receives a proposed rule may send written comments on the proposed rule to the Commission within 30 days after receiving the proposed rule. The Commission shall consider any comments received in determining whether to adopt the proposed rule.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 134, effective August 13, 1987.

(f) The Commission shall review its rules establishing guidelines for the coastal area at least every five years to determine whether changes in the rules are needed. (1973, c. 1284, s. 1; 1975, 2nd Sess., c. 983, ss. 75, 76; 1977, c. 771, s. 4; 1987, c. 827, s. 134.)

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

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, deleted the last sentence of subsection (a), which read "Such guidelines shall be adopted, and may be amended from time to time, in accordance with the procedure set forth in this section," rewrote

subsection (c), deleted subsections (d) and (e), pertaining to submission of comments and recommendations and adoption of guidelines, and rewrote subsection (f).

**Legal Periodicals.** — For comment, "Sunbathers Versus Property Owners: Public Access to North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

## § 113A-110. Land-use plans.

### CASE NOTES

**Revised zoning ordinance which prohibited further development of wet and dry boat storage at marinas** was within the police power of the State and consistent with the Coastal Area

Management Act. Issuance of Cama Minor Dev. Permit No. 82-0010 v. Town of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

## § 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).

### CASE NOTES

**Revised zoning ordinance which prohibited further development of wet and dry boat storage at marinas** was within the police power of the State and consistent with the Coastal Area

Management Act. Issuance of Cama Minor Dev. Permit No. 82-0010 v. Town of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

## Part 3. Areas of Environmental Concern.

### § 113A-113. Areas of environmental concern; in general.

**Legal Periodicals.** — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine

Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

### § 113A-115. Designation of areas of environmental concern.

(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this section are in addition to the hearing required by Article 2 of



Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

- (1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.
- (2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.
- (3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.
- (4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby.

(1973, c. 1284, s. 1; 1975, 2nd Sess., c. 983, s. 78; 1987, c. 827, 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.

**Effect of Amendments.** — The 1987

amendment, effective August 13, 1987, added the present second sentence of subsection (a).

## Part 4. Permit Letting and Enforcement.

### § 113A-118. Permit required.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136.)

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

**Effect of Amendments.** —

The 1987 amendment, effective August 13, 1987, deleted "with a right to appeal a permit denial to the Commis-

sion pursuant to the quasi-judicial procedures provided in G.S. 113A-122" at the end of subsection (c).

**Legal Periodicals.** — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine

Marshes, Denial of Permits to Fill, and the Public Trust,” see 64 N.C.L. Rev. 565 (1986).

CASE NOTES

**Quoted in Pamlico Marine Co. v. sources & Community Dev.,** 80 N.C. North Carolina Dep’t of Natural Re- App. 201, 341 S.E.2d 108 (1986).

**§ 113A-118.1. General permits.**

(b) General permits may be issued by the Commission. Individual developments carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of G.S. 113A-119.

(1983, c. 171; c. 442, s. 1; 1987, c. 827, s. 137.)

**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.** — August 13, 1987, deleted “as rules under the provisions of G.S. 113A-107” at the end of the first sentence of subsection (b).

The 1987 amendment, effective Au-

**§ 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.** — 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.”

The 1985 amendment, effective June

## § 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:

- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
- (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
- (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in paragraphs a to c of subsection (b)(3) of G.S. 113A-113.
- (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in paragraphs a to h of subsection (b)(4) of G.S. 113A-113.
- (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
- (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in paragraphs a to e of subsection (b)(6) [of G.S. 113A-113] in such a manner as to unreasonably endanger life or property.
- (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
- (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

(c) Variances. — Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In granting a variance, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall notify such persons and agencies that may have an interest in the subject mat-



ter of the time and place of the hearing. (1973, c. 1284, s. 1; 1983, c. 518, ss. 4, 5; 1987, c. 827, 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.

**Effect of Amendments.** —

The 1987 amendment, effective August 13, 1987, rewrote the introductory language of subsection (a), substituted "standards, or" for "regulations, standards or" in the first sentence of subsection (c), deleted "regulations" following "rules" in two places in the second sen-

tence of subsection (c), and substituted "granting a variance" for "varying such regulations" in the third sentence of subsection (c).

**Legal Periodicals.** — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

### § 113A-121.1. Administrative review of permit decisions.

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has a substantial likelihood of prevailing in a contested case.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes.

(c) A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of a permit. (1981, c. 913, s. 3; 1983, c. 400, ss. 1, 2; 1987, c. 827, s. 139.)



**Effect of Amendments. —**

The 1987 amendment, effective August 13, 1987, rewrote this section.

**§ 113A-122. Procedures for hearings on permit decisions.**

- (a) Repealed by Session Laws 1987, c. 827, s. 140, effective August 13, 1987.
- (b) The following provisions shall be applicable in connection with hearings pursuant to this section:
- (1), (2) Repealed by Session Laws 1987, c. 827, s. 140, effective August 13, 1987.
  - (3) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.
  - (4) to (6) Repealed by Session Laws 1987, c. 827, s. 140, effective August 13, 1987.
  - (7) The burden of proof at any hearing on a decision granting a permit shall be upon the person who requested the hearing.
  - (8), (9) Repealed by Session Laws 1987, c. 827, s. 140, effective August 13, 1987.
  - (10) The Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such orders and decisions of the Commission shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.
  - (11) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take official notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.

(1973, c. 1284, s. 1; 1979, c. 253, s. 6; 1981, c. 913, ss. 4-6; 1983, c. 172, s. 2; 1987, c. 827, s. 140.)

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

**Effect of Amendments.** —

The 1987 amendment, effective August 13, 1987, rewrote the catchline; repealed subsection (a) and subdivisions (b)(1), (b)(2), (b)(4) through (b)(6), (b)(8) and (b)(9); substituted "a decision grant-

ing a permit" for "appeal" in subdivision (b)(7); deleted "After hearing the evidence" at the beginning of subdivision (b)(10); deleted "regulation" following "rule" in the second sentence of subdivision (b)(11); and substituted "official notice" for "judicial notice" in the third sentence of subdivision (b)(11).

## § 113A-124. Additional powers and duties.

(a) The Secretary of Natural Resources and Community Development shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department of Natural Resources and Community Development or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department of Natural Resources and Community Development. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the secretaries of Administration and of Natural Resources and Community Development may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary of Natural Resources and Community Development the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department of Natural Resources and Community Development. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141, effective August 13, 1987.  
(1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1987, c. 827, ss. 125, 141.)

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

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted "rules" for "regulations" in subdivision (a)(5) and subsection (b), de-

leted "and regulations" following "rules" in subdivision (a)(4), deleted "the evidence and" preceding "the record" in the second sentence of subdivision (a)(6), and deleted subdivision (c)(5), pertaining to the power to adopt, modify, and revoke rules and regulations.

## § 113A-125. Transitional provisions.

(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; and rules concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Human Resources of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Human Resources pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and rules issued by the Department of Human Resources pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control pro-



grams or districts; any permits, licenses, authorizations, rules, approvals or certificates issued by the Department of Human Resources relating to septic tanks or water wells; oil or gas well rules and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or 113A-61; and any permits, licenses, authorizations, rules, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(d) The Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land-use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. (1973, c. 1284, s. 1; 1975, c. 452, s. 4; 1979, c. 299; 1987, c. 827, ss. 125, 142.)

**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.** — Section 104B-4, referred to in subsection (c), was repealed by Session Laws 1979, c. 141, s. 1. Section 143-215.99 was repealed by Session Laws 1975, c. 521, s. 1. Most of Chapter 130 was repealed by Session Laws 1983, c. 775, s. 1 and c. 891, s. 1. For provisions

relating to the public health, see now Chapter 130A.

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted "rules" for "regulations" in subsection (c), and deleted the second through last sentences of subsection (d), pertaining to the report by the Commission to the 1975 General Assembly as to procedures to implement the requirement of subsection (b).

## § 113A-126. Injunctive relief and penalties.

(a) Upon violation of any of the provisions of this Article or of any rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil

action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for such other and further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(d) (1) A civil penalty of not more than two hundred fifty dollars (\$250.00) for a minor development violation and two thousand five hundred dollars (\$2,500) for a major development violation may be assessed by the Commission against any person who:

- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
  - b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
  - c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
  - d. Violates a rule of the Commission implementing this Article.
- (2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.
- (3) The Commission may assess the penalties provided for in this subsection. The Commission shall notify a person who is assessed a penalty by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay a penalty, the Commission shall refer the matter to the Attorney General for collection.

- (4) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. (1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1983, c. 485, ss. 1-3; c. 518, s. 6; 1987, c. 827, ss. 11, 143.)

**Effect of Amendments.** —

Session Laws 1987, c. 827, s. 11, effective August 13, 1987, added “and shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes” at the end of the third sentence of subdivision (d)(3) as it read prior to amendment by Session Laws 1987, c. 827, s. 143, and deleted the last four sentences of subdivision (d)(3), as it then read, pertaining to hearing procedure, judicial review, institution of a civil action to collect the amount assessed upon

failure to pay it, and the scope of review of the Commission’s action in such civil action.

Session Laws 1987, c. 827, s. 143, effective August 13, 1987, deleted “regulation” throughout the section, substituted “113A-118” for “113A-122” in subdivision (d)(1)a, rewrote subdivision (d)(1)d, and rewrote subdivision (d)(3).

At the direction of the Revisor of Statutes, subdivision (d)(3) is set out above as rewritten by Session Laws 1987, c. 827, s. 143.

**§ 113A-128. Protection of landowners’ rights.**

Nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States. (1973, c. 1284, s. 1; 1987, c. 827, s. 144.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, deleted “or regulation” following “rule.”

**ARTICLE 7A.**

*Coastal and Estuarine Water Beach Access Program.*

**§ 113A-134.1. Legislative findings.**

**Legal Periodicals.** — For comment, *Public Access to North Carolina “Sunbathers Versus Property Owners: Beaches,”* see 64 N.C.L. Rev. 159 (1985).

**§ 113A-134.3. Standards for beach access program.**

The Coastal Resources Commission, with the support of the Department of Natural Resources and Community Development, shall establish and carry out a program to assure the acquisition, improvement and maintenance of a system of public access to ocean and estuarine water beaches. This beach access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of said property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands which, due to adverse effects of coastal and estuarine water natural hazards, such as past and potential erosion, flooding and storm damage, are unsuitable for the placement of permanent



structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all areas of the North Carolina coast and estuarine waters where access is compatible with the natural resources involved and where reasonable access is not already available as of June 30, 1981. To the maximum extent possible, this program shall be coordinated with State and local coastal and estuarine water management and recreational programs and carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary of Natural Resources and Community Development or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department of Natural Resources and Community Development may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose. These funds may be used to meet matching requirements for federal or other funds. The Department of Natural Resources and Community Development shall make every effort to obtain funds from sources other than the general fund for these purposes. Funds may be used to acquire or develop land for pedestrian access including parking or to make grants to local governments to accomplish the purposes of this Article. All acquisitions or dispositions of property made pursuant to this Article shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Article for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145.)

**Effect of Amendments. —**

The 1987 amendment, effective August 13, 1987, substituted "adopted" for "and regulations promulgated" in the fourth sentence.

**Legal Periodicals. —** For comment,

"Sunbathers Versus Property Owners: Public Access to North Carolina Beaches," see N.C.L. Rev. 159 (1985).

## 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-153. North Carolina Land Policy Council.**

(e) Acceptance and Administration of Federal or Private Funds. — The Department of Natural Resources and Community Development shall have power and authority to accept, receive and administer, on behalf of the Council, any funds, gifts, bequests, or other financial assistance given, granted or provided by legislative appropriation, or under any federal act or acts or from any federal agency, or from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds to the extent not inconsistent with the laws of this State and the rules thereunder pertaining to land-use planning and management. The Council shall have authority to formulate plans and projects for the approval of all funding agencies and institutions and to enter into such contracts and agreements as may be necessary for such purposes or to enter into joint agreements with any other agency or division of government for such purposes and to furnish such information as may be requested for any project or program related to or conducted pursuant to such plans and contracts. Such funds received by the Council pursuant to this provision shall be deposited in the State treasury to the account of the Council and shall remain in such account until used by the Council. (1973, c. 1306, s. 1; 1977, c. 771, ss. 4, 15; 1979, c. 44, s. 1; 1981, c. 47, s. 1; c. 881, s. 3; 1987, c. 827, 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.

**Effect of Amendments.** — The 1987

amendment, effective August 13, 1987, deleted "and regulations" following "rules" in subsection (e).

**§ 113A-155. State land policy.**

(b) Effect. — Such policies, principles, directives and methods, when not inconsistent or in conflict with existing law or rules, shall guide and determine the administrative procedures, findings, decisions and objectives of all agencies of State and local government with regard to acquisition, management, and disposition of public lands and interests therein and the regulation of private lands involved in or affected by areas of environmental concern, new communities, large-scale developments and projects of regional impact.

(c) Repealed by Session Laws 1987, c. 827, s. 147, effective August 13, 1987. (1973, c. 1306, s. 1; 1987, c. 827, 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 1987 amendment, effective August 13, 1987,

substituted "rules" for "valid regulations promulgated pursuant thereto" in subsection (b) and deleted subsection (c), pertaining to procedures.

### § 113A-156. State land classification system.

(e) Repealed by Session Laws 1987, c. 827, s. 148, effective August 13, 1987. (1973, c. 1306, s. 1; 1987, c. 827, s. 148.)

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

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, deleted subsection (e), pertaining to procedures.

**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).

### § 113A-158. Protection of rights.

Nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States, without payment of full compensation. (1973, c. 1306, s. 5; 1987, c. 827, s. 144.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, deleted "or regulation" following "rule."

## 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 rule 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 Heri-

tage 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; 1987, c. 827, s. 152.)

**Effect of Amendments.** — The 1987 substituted “rule” for “regulation” in amendment, effective August 13, 1987, subdivision (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 10.

*Control of Outdoor Advertising near the Blue Ridge Parkway.***§ 113A-166. Rules.**

The Secretary of the Department of Natural Resources and Community Development may adopt rules needed to implement this Article. (1975, c. 385; 1977, c. 771, s. 4; 1987, c. 827, s. 149.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, rewrote this section.

**§ 113A-168. Removal, etc., of unlawful advertising.**

Any outdoor advertising erected or established after May 26, 1975, in violation of the provisions of this Article shall be unlawful and shall constitute a nuisance. The Department of Natural Resources and Community Development shall give 30 days' notice by certified mail to the owner of the nonconforming outdoor advertising structure, if such owner is known or can by reasonable diligence be ascertained, to move the outdoor advertising structure or to make it conform to the provisions of this Article and rules and regulations promulgated by the Department of Natural Resources and Community Development hereunder. The Department of Natural Resources and Community Development or its agents shall have the right to remove or contract to have removed the nonconforming outdoor advertising at the expense of the said owner if the said owner fails to act within 30 days after receipt of such notice. The Department of Natural Resources and Community Development or its agents or contractor and his employees may enter upon private property for the purpose of removing outdoor advertising prohibited by this Article or its implementing rules without civil or criminal liability. (1975, c. 385; 1977, c. 771, s. 4; 1987, c. 827, s. 150.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted "its implementing rules" for "rules and regulations promulgated by

the Department of Natural Resources and Community Development hereunder" in the last sentence.

**§ 113A-170. Violation a misdemeanor; injunctive relief.**

Any person, firm, corporation or association placing or erecting outdoor advertising structure or junkyard along the Blue Ridge Parkway in violation of this Article or a rule adopted under this Article shall be guilty of a misdemeanor. In addition thereto, the Department of Natural Resources and Community Development may seek injunctive relief in the superior court of the county in which the said nonconforming outdoor advertising is located and require the outdoor advertising to conform to the provisions of this Article or a rule adopted under this Article, or require the removal of the said nonconforming outdoor advertising. (1975, c. 385; 1977, c. 771, s. 4; 1987, c. 827, s. 151.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, substituted “or a rule adopted under this Article” for “or any regulations passed pursuant thereto” and for “and rules and regulations promulgated pursuant hereto”.

**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).

**§ 113A-195. Collection of assessment.**

(b) The assessment shall be submitted on a quarterly basis of the State’s fiscal year due and payable the last day of the month following the end of each quarter.

(1977, c. 573, s. 7; 1987, c. 523.)

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

**Effect of Amendments.** — The 1987 amendment, effective July 1, 1987, and

applicable to assessments levied on or after that date, substituted “last day of the month” for “twenty-fifth of the month” in subsection (b).

## 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.

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

**Effect of Amendments.** — The 1985

**§ 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.**

<p><b>Article 2.</b> <b>Energy Crisis Administration.</b></p> <p>Sec. 113B-21. Creation of Legislative Committee on Energy Crisis Management.</p>	<p>Sec. 113B-22. Procedures for adopting emergency proposals; emergency powers.</p> <p>113B-23. Administration of plans and procedures.</p>
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**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 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 example 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.

**Editor's Note.** — The legislation and annotations affecting Chapter 114 have been included in a recently published replacement chapter.

**Chapters 115C to 116.**

**Editor's Note.** — The legislation and annotations affecting Chapters 115C to 116 have been included in recently published replacement chapters.

**Chapter 116B.**  
**Escheats and Abandoned Property.**

<p style="text-align: center;"><b>Article 2.</b> <b>Abandoned Property.</b></p> <p>Sec. 116B-12. Property held by financial institutions. 116B-13. Property held by life insurers. 116B-14. Property held by other insurers.</p> <p style="text-align: center;"><b>Article 3.</b> <b>Administration of Abandoned Property.</b></p> <p>116B-29. Report of abandoned property by holder to Treasurer.</p>	<p>Sec. 116B-30. Preparation of list of owners by State Treasurer. 116B-31. Payment or delivery of abandoned property. 116B-31.1 to 116B-31.4. [Reserved.] 116B-31.5. Voluntary early delivery. 116B-38. Claim for abandoned property paid or delivered. 116B-42. Rules.</p>
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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).

### § 116B-15. Property held by utilities.

#### OPINIONS OF ATTORNEY GENERAL

**Distribution of Refunds.** — As to voluntary, partial refund plan submitted by Western Carolina University (WCU) for approval to the Commission for refund of a portion of refund made to it by whole-saler incident to litigation to its own retail customers for the years involved, the language of this section, the escheats statute, did not become operative so as to mandate the escheating

to the State Treasurer of unclaimed refunds, and as proposed to be treated by WCU to maintain the existing system for accounting purposes, the refunds did not constitute net profits which had to be turned over to the endowment fund. See opinion of Attorney General to Mr. Myron L. Coulter, Chancellor, Western Carolina University, 55 N.C.A.G. 55 (1985).

## ARTICLE 3.

*Administration of Abandoned Property.***§ 116B-29. Report of abandoned property by holder to Treasurer.**

(a) Reports to Treasurer. — Every insurer holding property presumed abandoned under the provisions of one or more of the following sections, G.S. 116B-13, 116B-14, 116B-16, 116B-17, 116B-20, or 116B-21, shall report and make payment to the Treasurer in accordance with G.S. 116B-31. Every other person holding funds or other property, tangible or intangible, presumed abandoned under this Chapter shall report to the State Treasurer with respect to that property.

(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 fifty dollars (\$50.00) 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 fifty dollars (\$50.00) 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; 1987, c. 163, ss. 1-3.)

**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, 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).

The 1987 amendment, effective May

8, 1987, deleted "Commissioner of Insurance and" preceding "Treasurer" in the catchline and at the beginning of subsection (a), substituted "report and make payment" for "report to the Commissioner of Insurance, with respect to that property; however, payment of such property shall be" in the first sentence of subsection (a), and substituted "fifty dollars (\$50.00)" for "twenty-five dollars (\$25.00)" in subdivisions (b)(1) and (b)(3).

## § 116B-30. Preparation of list of owners by State Treasurer.

(a) Listing of Names. — There shall be delivered to each clerk of superior court prior to November 1 a list prepared by the State Treasurer of escheated and abandoned property reported to him which lists shall contain:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of owners of escheated and abandoned property;
- (2) The names and addresses of the holders of the abandoned property; and
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, and setting forth where further information may be obtained.

(c) Property Not Required to Be Listed. — The Treasurer is not required to include in any such list any item of a value, as determined by the Treasurer, in his discretion, of less than fifty dollars (\$50.00), unless he deems inclusion of items of lesser amounts to be in the public interest.

(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; 1987, c. 163, ss. 4, 5.)

**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, effective May 21, 1985, added subsection (f).

The 1987 amendment, effective May 8, 1987, deleted a reference to the Com-

missioner of Insurance from the catchline of this section, deleted "and the Commissioner of Insurance" following "reported to him" in the introductory language of subsection (a), and substituted "fifty dollars (\$50.00)" for "twenty-five dollars (\$25.00)" in subsection (c).

## § 116B-31. Payment or delivery of abandoned property.

(a) Insurers. — Every insurer shall remit or deliver to the Treasurer on or before December 1, any property deemed abandoned under the provisions of this Chapter and reported as required by G.S. 116B-29. These remittances shall be made payable to the Treasurer.

(1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 14; 1987, c. 163, s. 6.)

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

**Effect of Amendments.** — The 1987 amendment, effective May 8, 1987, sub-

stituted "Treasurer" for "Commissioner of Insurance" in the first sentence of subsection (a), deleted "State" preceding "Treasurer" at the end of the second sentence of subsection (a), and deleted a for-



mer third sentence of that subsection, which read "On or before December 10, the Commissioner of Insurance shall forward the remittances to the State Treasurer along with a copy of the reports required by G.S. 116B-29."

**§§ 116B-31.1 to 116B-31.4:** Reserved for future codification purposes.

**§ 116B-31.5. Voluntary early delivery.**

(a) If the identity of an owner is unknown the holder may voluntarily remit or deliver property subject to this Chapter to the Treasurer prior to the date required by G.S. 116B-31.

(b) If an owner is known but the holder does not possess an address for the owner and the holder has exhausted all methods of contacting the owner that are reasonable under the circumstances, the holder may voluntarily remit or deliver the property to the Treasurer prior to the date required by G.S. 116B-31.

(c) Nothing in this section shall impair the right of the Treasurer to refuse property under the provisions of G.S. 116B-31(c). (1987, c. 163, s. 7.)

**Editor's Note.** — Session Laws 1987, c. 163, s. 9 makes this section effective upon ratification. The act was ratified May 8, 1987.

**§ 116B-38. Claim for abandoned property paid or delivered.**

(a) Filing. — Any person claiming an interest in any property delivered to the Treasurer under this Chapter may file a claim to the property or to the proceeds from its sale. The claim shall be on a form prescribed by the Treasurer and shall have affixed thereto any documentary proof of entitlement as may be required by the Treasurer. At the discretion of the Treasurer, the claim shall be made to the person originally holding the property, or to his successor or successors. If such person is satisfied that the claim is valid and that the claimant is the actual and true owner of the property, he shall so certify to the Treasurer by written statement attested by him under oath, or in case of a corporation, by two principal officers, or one principal officer and an authorized employee thereof. The determination of the holder that the claimant is the actual and true owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from such sale to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by such assignment. In the event the person originally holding the property rejects the claim made against him, the claimant may appeal to the Treasurer.

If the person originally holding the property, or his successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the person originally holding the property and the lack of a successor.

(b) Determination. — The Treasurer shall consider each claim and make a determination on it within 90 days after it is filed. Each determination shall be in writing, shall state the reasons for the decision and shall be given or sent to the claimant. A claimant who is dissatisfied with the determination of the Treasurer may commence a contested case by filing a petition under G.S. 150B-23 within 15 days of receiving notice of the determination.

(1979, 2nd Sess., c. 1311, s. 1; 1987, c. 163, s. 8; c. 827, s. 18.)

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

**Effect of Amendments.** — Session Laws 1987, c. 163, s. 8, effective May 8, 1987, inserted "and shall have affixed thereto any documentary proof of entitlement as may be required by the Treasurer" at the end of the second sentence of subsection (a), and inserted "At the

discretion of the Treasurer" at the beginning of the third sentence of that subsection.

Session Laws 1987, c. 827, s. 18, effective August 13, 1987, deleted the former second and fourth sentences of subsection (b), pertaining to hearings and appeals, and added the last sentence of subsection (b).

## § 116B-42. Rules.

The Treasurer or, with respect to insurers, the Commissioner may adopt rules necessary to carry out this Chapter. (1979, 2nd Sess., c. 1311, s. 1; 1987, c. 827, s. 19.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, rewrote this section.



STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1987*

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 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*

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