

THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1988 CUMULATIVE SUPPLEMENT

Volume 3A, Part II

Chapters 113 through 116B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 368 S.E.2d 309. For complete scope of
annotations, see scope of volume page.

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

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Preface

This Cumulative Supplement to Volume 3A, Part II contains the general laws of a permanent nature enacted by the General Assembly through the 1987 (Regular Session, 1988) Session, which are within the scope of such volume, and brings to date the annotations included therein.

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

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

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

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

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

User's Guide

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

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1987 (Regular Session, 1988) 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 322, p. 116.
- North Carolina Court of Appeals Reports through Volume 89, p. 583.
- South Eastern Reporter 2nd Series through Volume 368, p. 309.
- Federal Reporter 2nd Series through Volume 846, p. 78.
- Federal Supplement through Volume 683, p. 1410.
- Federal Rules Decisions through Volume 119, p. 460.
- Bankruptcy Reports through Volume 85, p. 182.
- Supreme Court Reporter through Volume 108, p. 1762.
- North Carolina Law Review through Volume 66, p. 837.
- Wake Forest Law Review through Volume 23, p. 398.
- Campbell Law Review through Volume 10, p. 352.
- Duke Law Journal through 1987, p. 976.
- North Carolina Central Law Journal through Volume 17, p. 118.
- Opinions of the Attorney General.

The General Statutes of North Carolina 1988 Cumulative Supplement

VOLUME 3A, PART II

Chapter 113.

Conservation and Development.

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

lation of wildlife resources;
certain local acts retained.

Article 13.

Jurisdiction of Conservation Agencies.

Sec.

113-133.1. Limitations upon local regu-

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

ARTICLE 13.

Jurisdiction of Conservation Agencies.

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

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

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

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

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

Avery: Former G.S. 113-122.

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

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

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

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1973, Chapter 124, amending Session Laws 1969, Chapter 121; (as it pertains to wild turkeys); Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Grandville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1955, Chapter 692; Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

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

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

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

Sampson: Session Laws 1979, Chapter 373.

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

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

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

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

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

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

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

Washington: Session Laws 1947, Chapter 620.

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

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

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

Yancey: Session Laws 1965, Chapter 522.

(1979, c. 830, ss. 1, 14; 1979, 2nd Sess., c. 1285, ss. 2, 11; c. 1324, s. 2; 1981, c. 249, s. 2; c. 250, s. 2; 1983, c. 109, s. 2; c. 487, s. 2; 1985, c. 112, s. 1; c. 302, s. 1; c. 689, s. 27; 1986, c. 893, s. 4; 1987, c. 33, s. 4; c. 131, ss. 4, 5; c. 245, s. 2; c. 282, s. 16; 1987 (Reg. Sess., 1988), c. 955, s. 4.)

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

Effect of Amendments. —

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

ment, effective October 1, 1988, deleted the entry in subsection (e) for Pasquotank County.

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.
- 113A-66. Civil relief.

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.
- 113A-96 to 113A-99. [Reserved.]

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

Sec.

- 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.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 123(b), provides:

"(b) The Office of State Budget and Management may contract for and supervise all aspects of design, construction, or demolition of prison facilities designated in subdivisions (1) through (5) of subsection (a) of this section [s. 123 of c. 1086, which provided for prison facilities construction funds] without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and

133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

Construction of the dormitories set out in subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall be based on the existing design used for the new 104-man dormitories built in the South Piedmont Area of the Division of Prisons to comply with the consent judgment in the case of HUBERT v. WARD, allowing for site adaptations and other necessary modifications.

This subsection expires upon completion of the capital projects designated in subdivisions (1) through (5) of subsection (a) of this section."

§ 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.

Effect of Amendments. — The 1987

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

§ 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, c. 129, s. 4, makes this section effective on ratification. The act was ratified April 26, 1985.

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

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 123(b), provides:

"(b) The Office of State Budget and Management may contract for and supervise all aspects of design, construction, or demolition of prison facilities designated in subdivisions (1) through (5) of subsection (a) of this section [s. 123 of c. 1086, which provided for prison facilities construction funds] without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and

133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

Construction of the dormitories set out in subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall be based on the existing design used for the new 104-man dormitories built in the South Piedmont Area of the Division of Prisons to comply with the consent judgment in the case of HUBERT v. WARD, allowing for site adaptations and other necessary modifications.

This subsection expires upon completion of the capital projects designated in subdivisions (1) through (5) of subsection (a) of this section."

§ 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 publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans;
- (4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities. As to those activities requiring prior plan approval, the Commission

must either approve or disapprove the plan within 30 days of receipt. The draft plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. 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; 1987 (Reg. Sess., 1988), c. 1000, s. 3.)

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.

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, inserted the present third sentence of the first paragraph of subdivision (d) (4).

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 ac-

tivities 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; or
- (5) 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; 1987 (Reg. Sess., 1988), c. 1000, s. 4.)

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

Editor's Note. — Subsection (a) was amended by Session Laws 1987 (Reg. Sess., 1988), c. 1000, s. 4, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987,

substituted "to adopt rules" for "for the purpose of promulgating regulations" in the introductory language of subsection (a).

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, inserted "or" at the end of subdivision (a)(4), deleted a former subdivision (a)(5), which read "Licensed by the State or the United States; or", and renumbered former subdivision (a)(6) as present subdivision (a)(5).

§ 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, 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), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (3) of this subsection. 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.
- (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.

- (4) Any person who fails to submit an erosion control plan for approval by the Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 shall be subject to a single, noncontinuing civil penalty of not more than one thousand dollars (\$1,000). Any penalty which is recovered pursuant to this subdivision shall be deposited in the General Fund. Any person who is subject to a civil penalty under this subdivision may be subject to additional civil penalties for violation of any other provision of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or a local government.

(1973, c. 392, s. 15; 1977, c. 852; 1987, c. 246, s. 3; 1987 (Reg. Sess., 1988), c. 1000, s. 5.)

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

Editor's Note. — This section was amended by Session Laws 1987 (Reg. Sess., 1988), c. 1000, s. 5, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 amendment, effective June 2, 1987, added subdivision (a)(3).

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, deleted "regulation" following "rule" near the beginning of the first sentence of subdivision (a)(1), inserted "except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (3) of this subsection" at the end of subdivision (a)(1), deleted "under G.S. 113A-64(a)(1)" at the end of the last sentence of subdivision (a)(1), and added subdivision (a)(4).

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.

(a) Any person injured by a violation of this Article or any ordinance, rule, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek:

- (1) Injunctive relief;
- (2) An order enforcing the law, rule, ordinance, order, or erosion control plan violated; or
- (3) Damages caused by the violation; or
- (4) Both damages and an enforcement order.

If the amount of actual damages as found by the court or jury in suits brought under this subsection is five thousand dollars (\$5,000) or less, the plaintiff shall be awarded costs of litigation including reasonable attorneys fees and expert witness fees.

(1973, c. 392, s. 17; 1987 (Reg. Sess., 1988), c. 1000, 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 Amendment. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, deleted "regulation" following "rule" in the first sentence of

the introductory language of subsection (a) and in subdivision (a)(2); deleted former subdivision (a)(4), which read "Both damages and injunctive relief; or"; renumbered former subdivision (a)(5) as subdivision (a)(4); and rewrote the final sentence of subdivision (a).

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.

Effect of Amendments. — The 1987

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

§ 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.

§§ 113A-96 to 113A-99: Reserved for future codification purposes.

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 Commission 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. North Carolina Dep't of Natural Resources & Community Dev., 80 N.C. 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. —

The 1987 amendment, effective Au-

gust 13, 1987, deleted "as rules under the provisions of G.S. 113A-107" at the end of the first sentence of subsection (b).

§ 113A-119. Permit applications generally.

(b) Upon receipt of an application, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) by posting or causing to be posted a notice at the location of the proposed development stating that an application for development has been made, where the application may be inspected, and the time period for comments; and (iii) by publishing notice of the application at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by

a specified date, not to exceed 15 days from the date of the newspaper publication of the notice. Public notice under this subsection is mandatory.

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

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

Effect of Amendments. —

The 1985 amendment, effective June

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

§ 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 reason-

ably 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 matter 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 Commis-

sion 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 programs 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.

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

Effect of Amendments. — The 1987

§ 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 com-

munities 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 pub-

lic agencies and private persons for environmental assessment and land management purposes. Use of the inventory data for any purpose inconsistent with the Natural Heritage Program may not be authorized. The Program shall include other functions as may be assigned for registration, dedication, and protection of natural areas and nature preserves.

- (4) Prepare a Natural Heritage Plan that shall govern the Natural Heritage Program in the creation of a system of registered and dedicated natural areas.
- (5) Publish and disseminate information pertaining to natural areas and nature preserves within the State.
- (6) Appoint advisory committees composed of representatives of federal, State, and local governmental agencies, scientific and academic institutions, conservation organizations, and private business, to advise him on the identification, selection, registration, dedication, and protection of natural areas and nature preserves.
- (7) Submit to the Governor and the General Assembly a biennial report on or before February 15, 1987, and on or before February 15 of subsequent odd-numbered years describing the activities of the past biennium and plans for the coming biennium, and detailing specific recommendations for action that the Secretary deems necessary for the improvement of the Program. (1985, c. 216, s. 1; 1987, c. 827, s. 152.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted “rule” for “regulation” in 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 dedi-

cation 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>Article 2. Energy Crisis Administration.</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 President pro tempore and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie.

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

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

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

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

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

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

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

(d) The Governor's orders, rules and regulations, promulgated, subject to consultation with the Legislative Committee, pursuant to

this section, may also include, by way of further enumerated 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.
Department of Justice.

ARTICLE 1.

Attorney General.

§ 114-1.1. Common-law powers.

CASE NOTES

The duties of the Attorney General in this State as prescribed by statutory and common law include the duty to appear for and to defend the state or its

agencies in all actions in which the State may be a party or interested. *Martin v. Thornburg*, 320 N.C. 533, 359 S.E.2d 472 (1987).

§ 114-2. Duties.

CASE NOTES

Duty of Attorney General to Appear for State Is Constitutional. — The duty of the Attorney General to appear for the State in any court proceeding in which the state may be a party as provided in subdivision (1) does not violate Art. III, § 1 of the North Carolina Constitution. *Martin v. Thornburg*, 320 N.C. 533, 359 S.E.2d 472 (1987).

Statutory and Common Law Du-

ties. — The duties of the Attorney General in this State as prescribed by statutory and common law include the duty to appear for and to defend the state or its agencies in all actions in which the State may be a party or interested. *Martin v. Thornburg*, 320 N.C. 533, 359 S.E.2d 472 (1987).

Chapter 115C.

Elementary and Secondary Education.

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

Article 2.

State Board of Education.

Sec.

- 115C-11. Organization and internal procedures of Board.
 115C-12. (Effective February 1, 1989) Powers and duties of the Board generally.

Article 3.

Department of Public Instruction.

- 115C-19. (Effective February 1, 1989) Chief administrative officer of the State Board of Education.
 115C-21. (Effective February 1, 1989) Powers and duties generally.

Article 4.

Office of the Controller.

- 115C-27 to 115C-34. [Repealed effective Feb. 1, 1989.]

Article 5.

Local Boards of Education.

- 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.
 115C-47. (For effective date see notes) Powers and duties generally.
 115C-47. (For effective date see notes) Powers and duties generally.

SUBCHAPTER IV. EDUCATION PROGRAM

Article 8.

General Education.

Part 1. Courses of Study.

- 115C-82. [Repealed.]

Part 3. Textbooks.

- 115C-90. (Effective February 1, 1989) Adoption of textbooks and contracts with publishers.

Article 9.

Special Education.

Part 2. Nondiscrimination in Education.

Sec.

- 115C-113.1. Surrogate parents.
 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.

Part 3. Appeals.

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

Article 10A.

Testing.

Part 2. Statewide Testing Program.

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

Article 13A.

State Advisory Council on Indian Education.

- 115C-210. Council established.
 115C-210.1. Membership — How appointed.
 115C-210.2. Term of office.
 115C-210.3. Organization, meetings, and compensation.
 115C-210.4. Duties of the Council.
 115C-211 to 115C-214. [Reserved.]

SUBCHAPTER V. PERSONNEL.

Article 18.

Superintendents.

- 115C-275. (Effective February 1, 1989) Vacancies in office of superintendent.
 115C-276. Duties of superintendent.

Article 20.

Teachers.

- 115C-296. Board sets certification requirements.
 115C-301. Allocation of teachers; class size.

Article 22.**General Regulations.****Part 3. Principal and Teacher
Employment Contracts.**

Sec.

115C-325. System of employment for
public school teachers.**SUBCHAPTER VII. FISCAL
AFFAIRS.****Article 31.****The School Budget and Fiscal
Control Act.****Part 2. Budget.**115C-432. The budget resolution; adop-
tion; limitations; tax levy;
filing.**Part 3. Fiscal Control.**115C-438. (Effective February 1, 1989)
Provision for disbursement
of State money.115C-447. (Effective February 1, 1989)
Annual independent audit.**SUBCHAPTER IX. PROPERTY.****Article 38.****State Insurance of Public
School Property.**

Sec.

115C-541. Adjustment of losses; deter-
mination and report of ap-
praisers; payment of
amounts to treasurers of lo-
cal school administrative
units; disbursement of
funds.**SUBCHAPTER X. PRIVATE AND
PROPRIETARY SCHOOLS.****Article 39.****Nonpublic Schools.****Part 3. Home Schools.**

115C-563. Definitions.

115C-564. Qualifications and require-
ments.

115C-565. Requirements exclusive.

115C-566, 115C-567. [Reserved.]

SUBCHAPTER I. GENERAL PROVISIONS.**ARTICLE 1.*****Definitions and Preliminary Provisions.*****§ 115C-1. General and uniform system of schools.****Local Modification.** — (As to this
Chapter) Caswell: 1987 (Reg. Sess.,
1988), c. 1016, s. 12.**CASE NOTES****Cited** in *Britt v. North Carolina State
Bd. of Educ.*, 86 N.C. App. 282, 357
S.E.2d 432 (1987).

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

ARTICLE 2.

State Board of Education.

§ 115C-11. Organization and internal procedures of Board.

(b1) Annual meeting with the State Board of Community Colleges and the Board of Governors of The University of North Carolina. The State Board of Education shall meet with the State Board of Community Colleges and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State. The meeting in 1987 and every three years thereafter shall be hosted by the University Board of Governors, the meeting in 1988 and every three years thereafter shall be hosted by the State Board of Education, and the meeting in 1989 and every three years thereafter shall be hosted by the State Board of Community Colleges.

(1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19; 1971, c. 704, s. 3; 1975, c. 699, s. 1; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 991, s. 1; 1987 (Reg. Sess., 1988), c. 1102, 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.

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1987, added subsection (b1).

Effect of Amendments. —

§ 115C-12. (Effective February 1, 1989) Powers and duties of the Board generally.

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

- (1) **Financial Powers.** — The financial powers of the Board are set forth in Article 30 of this Chapter.
- (2) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 975, s. 24, effective July 11, 1986.
- (3), (4) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1025, s. 1, effective February 1, 1989.
- (5) **Apportionment of Funds.** — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

- (6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. — When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.
- (7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.
- (8) Power to Make Provisions for Sick Leave. — The Board shall provide for a minimum of five days per school year term of sick leave with pay for all public school employees and shall promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall be fixed by the Board. The Board may provide to each local school administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.
- (9) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:
 - a. To certify and regulate the grade and salary of teachers and other school employees.
 - b. To adopt and supply textbooks.
 - c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government.

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

local school administrative unit for implementation of the Basic Education Program.

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

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

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

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

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

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

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

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

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

- (13) **Power to Purchase Liability Insurance.** — The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.
- (14) **Duty to Provide Personnel Information to Local Boards.** — Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.
- (15) **Duty to Develop Noncertified Personnel Position Evaluation Descriptions.** — The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.
- (16) **Power with Regard to Salary Schedules.** —
- a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.
 - b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, property and cost clerks, aides, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.
 - c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.
- (17) **Power to provide for school transportation programs.** The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and regulations shall include, but are not limited to, fund allocations and

fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with G.S. 115C-366.

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

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

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

(1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3.)

For this section as in effect until February 1, 1989, see the main volume.

Effect of Amendments. —

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

ment, effective February 1, 1989, inserted the present second sentence in the introductory language, and deleted subdivisions (3) and (4).

ARTICLE 3.

Department of Public Instruction.

§ 115C-19. (Effective February 1, 1989) Chief administrative officer of the State Board of Education.

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. The Superintendent of Public Instruction shall administer the policies adopted by the State Board of Education. (1955, c. 1372, art.

3, s. 1; 1971, c. 704, s. 5; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 4.)

For this section as in effect until February 1, 1989, see the main volume. Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective February 1, 1989, added the second sentence.

§ 115C-21. (Effective February 1, 1989) Powers and duties generally.

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

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

(b) **Duties as Secretary to the State Board of Education.** — As secretary, under the direction of the Board, it shall be the duty of the Superintendent of Public Instruction:

- (1) To administer through the Department of Public Instruction, all policies established by the Board.
- (2) To keep the Board informed regarding developments in the field of public education.
- (3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.
- (4) To make available to the public schools a continuous program of comprehensive supervisory services.
- (5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.
- (6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.
- (7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the

name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

- (8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board a copy of said minutes.
- (9) To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 2, s. 2; art. 3, ss. 3, 4; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, ss. 2, 3; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1985, c. 479, s. 37; 1987 (Reg. Sess., 1988), c. 1025, ss. 5-8.)

For this section as in effect until February 1, 1989, see the main volume.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective February 1, 1989, deleted "subject to the approval of the State Board of Education" following "to organize and establish" near the beginning of subdivision (a)(1), deleted "Provided, however, all appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction shall be under the control and management of

the superintendent of Public Instruction" at the end of subdivision (a)(1), deleted "administrative" preceding "head of the public school system" in subdivision (a)(5), deleted "except the supervision and management of the fiscal affairs of the Board" at the end of subdivision (a)(5), substituted "all policies" for "the instructional policies" in subdivision (b)(1), and deleted "and the controller" preceding "a copy of said minutes" at the end of subdivision (b)(8).

ARTICLE 4.

Office of the Controller.

§§ 115C-27 to 115C-34: Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1025, s. 2, effective February 1, 1989.

For these sections as in effect until February 1, 1989, see the main volume.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1025, s. 16 provides that the Office of the Controller of the

State Board of Education is transferred to the Department of Public Instruction, and that this transfer shall have all of the elements of a Type I transfer, as that term is defined in § 143A-6(a).

ARTICLE 5.

*Local Boards of Education.***§ 115C-37. Election of board members.**

Local Modification. — Caswell County Board of Education: 1987 (Reg. Sess., 1988), c. 1016, s. 15; Pamlico County Board of Education: 1987 (Reg. Sess., 1988), c. 939, s. 11.

Editor's Note. —

By virtue of Session Laws 1987 (Reg. Sess., 1988), c. 939, s. 12, the local modification in the main volume under this section as to Pamlico County by Session Laws 1981, c. 551, should be deleted.

§ 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.

(a) All vacancies in the membership of county boards of education which are elected by public or local act on a partisan basis shall be filled by appointment of the person, board, or commission specified in the act, except that if the act specifies that appointment shall be made by a party executive committee, then the appointment shall be made instead by the remaining members of the board.

(b) If the vacating member was elected as the nominee of a political party, then the person, board, or commission required to fill the vacancy shall consult with the county executive committee of that party and appoint the person recommended by that party executive committee, if the party executive committee makes a recommendation within 30 days of the occurrence of the vacancy.

(c) Whenever only the qualified voters of less than the entire county were eligible to vote for the member whose seat is vacant (either because the county administrative unit was less than countywide or only residents of certain areas of the administrative unit could vote in the general election for a district seat), the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territory of the vacating school board member.

(d) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Vance, Wake, Washington, and Yancey. (1981, c. 763, ss. 4, 14; c. 830; 1983, c. 493, s. 1; 1987 (Reg. Sess., 1988), c. 974, s. 5.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective

June 24, 1988, inserted a reference to Vance County in subsection (d).

§ 115C-44. Suits and actions.

CASE NOTES

Presumptions and Burden of Proof. —

Subsection (b) of this section clearly places the burden of proof on plaintiff probationary school teachers to establish that the actions of the board in failing to renew their contracts were arbitrary or capricious. Moreover, the burden of proof includes not only the burden of going forward with the evidence, but also the burden of persuasion. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

trary or capricious. Moreover, the burden of proof includes not only the burden of going forward with the evidence, but also the burden of persuasion. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

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

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

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

- (7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.
- (8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.
- (9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.
- (10) **(Effective until February 1, 1989)** To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allot-

ment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the Controller of the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

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In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

- (11) To Determine the Length of the School Day, the School Month and the School Term. — Local boards of education

shall determine the length of the school day, the school month and the school term pursuant to the provisions of G.S. 115C-84(a) through (c).

- (12) To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.
- (13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.
- (14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.
- (15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).
- (16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).
- (17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).
- (18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.
- (19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.
- (20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.
- (21) **(Effective until February 1, 1989)** It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

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

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and con-

taining all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school.

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The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

- (22) **To Provide School Food Services.** — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.
- (23) **To Purchase Equipment and Supplies.** — They shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a).
- (24) **Purchase of Activity Buses with Local Capital Outlay Tax Funds.** — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. The State Board of Education shall inspect each activity bus and recommend to the board whether the bus should be replaced but replacements will be determined by the local board of education. Such replacement units for activity buses shall be financed with local funds.
- (25) **To Secure Liability Insurance.** — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.
- (26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.
- (27) Repealed by Session Laws 1987, c. 571, s. 2, effective July 7, 1987.

- (28) To Enter Lease Purchase Contracts for Automobiles. — Local boards may purchase automobiles by installment contracts that create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this subdivision is subject to the provisions of Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). The lease purchase contract shall provide that there be no recourse for default in payments under the contract other than return of the automobile. The taxing power of any tax levying authority is not and may not be pledged directly or indirectly to secure any moneys due the seller.
- (29) To Authorize the Observance of a Moment of Silence. — Local boards of education may adopt policies to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.
- (30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.
- (31) Local boards of education shall determine the hours of employment for teacher aides. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher aides and other employees.
- (32) To refer all students who drop out of the public schools to appropriate services. Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, s. 55(c)(4); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; 1987 (reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b).)

Section Set Out Twice. — The section above is effective until the components of the standard course of study

have been fully incorporated and implemented as a part of the Basic Education Program. For this section as amended

effective at that time, see the following section, also numbered § 115C-47.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988), c. 1025, ss. 9 and 15, effective February

1, 1989, deleted "controller of the" preceding "State Board of Education" in the third paragraph of subdivision (10) and at the end of the first sentence of the last paragraph of subdivision (21).

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 89(b), effective July 1, 1988, rewrote subdivision (10).

CASE NOTES

Criteria for Renewal of Contract of Probationary Teacher Who Serves as Coach. — Given the broad legislative grant of authority over the status of probationary teachers and the legislative grant to local boards under subdivision (4) of this section, requiring them to promulgate rules and regulations for in-

terscholastic athletics, a board may properly consider coaching changes as a basis for determining whether to renew a probationary teacher's contract when the teacher also serves as a coach. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

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

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

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

- approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.
- (7) **To Accept and Administer Federal or Private Funds.** — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.
- (8) **To Sponsor or Conduct Educational Research.** — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.
- (9) **To Assure Accurate Attendance Records.** — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.
- (10) **To Assure Appropriate Class Size.** — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of

the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

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

conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

- (19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.
- (20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.
- (21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

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

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

tional or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

- (27) Repealed by Session Laws 1987, c. 571, s. 2, effective July 7, 1987.
- (28) **To Enter Lease Purchase Contracts for Automobiles.** — Local boards may purchase automobiles by installment contracts that create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this subdivision is subject to the provisions of Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). The lease purchase contract shall provide that there be no recourse for default in payments under the contract other than return of the automobile. The taxing power of any tax levying authority is not and may not be pledged directly or indirectly to secure any moneys due the seller.
- (29) **To Authorize the Observance of a Moment of Silence.** — Local boards of education may adopt policies to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.
- (30) **To Appoint Advisory Councils.** — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.
- (31) Local boards of education shall determine the hours of employment for teacher aides. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher aides and other employees.
- (32) **To refer all students who drop out of the public schools to appropriate services.** Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 6; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 539; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2.1; c. 1034, s. 16;

1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b).)

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

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988), c. 1025, ss. 9 and 15, effective February 1, 1989, deleted "controller of the" preceding "State Board of Education" in the third paragraph of subdivision (10) and at the end of the first sentence of the last paragraph of subdivision (21).

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 89(b), effective July 1, 1988, rewrote subdivision (10).

SUBCHAPTER IV. EDUCATION PROGRAM.

ARTICLE 8.

General Education.

Part 1. Courses of Study.

§ 115C-82: Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 89(d), effective July 1, 1988.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Part 3. Textbooks.

§ 115C-90. (Effective February 1, 1989) Adoption of textbooks and contracts with publishers.

The publishers' sealed bids shall be opened in the presence of two persons designated by the State Board of Education and one person designated by the Superintendent of Public Instruction. The Board may then adopt the books required by the courses of study and enter into contracts with the publisher of adopted books. It may refuse to adopt any of the books offered at the prices bid and call for new bids. When bids are accepted and a contract entered into, the contract may require, in the Board's discretion, that the total sales of each book in the State of North Carolina be reported annually to the Board.

All textbook contracts shall include a clause granting to the State Board of Education the license to produce Braille, large print, and audio-cassette tape copies of the textbooks for use in the State public schools. Also, the General Assembly urges the State Board of Education to request such a license from textbook publishers with

whom a contract was entered into prior to August 1, 1987. (1955, c. 1372, art. 24, s. 6; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1983, c. 549, s. 1; 1987, c. 738, s. 190; 1987 (Reg. Sess., 1988), c. 1025, s. 10.)

For this section as in effect until February 1, 1989, see the main volume.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective February 1, 1989, rewrote the first sentence of this section, which read "The publishers' sealed bids shall be opened in the presence of a per-

son designated by the Controller of the State Board of Education, a person designated by the State Board of Education and the Director of the Division of Textbooks, Support Services Area, Office of the Controller of the State Board of Education."

ARTICLE 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 148.6, amends Session Laws 1987, c. 738, s. 82(e), as noted in the

main volume under this section, by setting out reporting requirements to be submitted by May 1, 1989.

Part 2. Nondiscrimination in Education.

§ 115C-113.1. Surrogate parents.

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction and the Secretary of Human Resources, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent. (1987 (Reg. Sess., 1988), c. 1079, s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1079, s. 4 makes this section effective upon ratification,

and applicable to all petitions for review filed on or after that date. The act was ratified July 8, 1988.

§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.

The board shall adopt rules and regulations to assure that:

- (1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so

placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

- (3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Human Resources or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost. (1977, c. 927, s. 1; 1979, 2nd Sess., c. 1299, s. 2; 1981, c. 423, s. 1; 1983, c. 768, s. 7; 1987 (Reg. Sess., 1988), c. 1079, s. 3.)

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

Editor's Note. —

Subdivision (1) of this section is set out above to correct an error in the main volume.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 8, 1988, and applicable to all peti-

tions for review filed on or after that date, deleted the last sentence of subdivision (3), which read "The State and local educational agencies shall be excused from payment of the costs of special education and related services in a private school if a child is placed in that school by his parents or guardian against the advice of the State or a local educational agency."

Part 3. Appeals.

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

(a) Notice. — The parent, guardian, or surrogate parent of a child shall be notified promptly when:

- (1) The local educational agency proposes to initiate or change, or refuses to initiate or change, the identification of a child as a child with special needs; or
- (2) The local educational agency proposes to initiate or change, or refuses to initiate or change, the child's individualized education program.

The notice shall be in writing and shall contain a statement advising the parent, guardian, or surrogate parent of the right to review the proposed decision; a statement offering the parent, guardian, or surrogate parent the opportunity for mediation; and a copy of this statute and G.S. 150B-23 through 150B-37 or an explanation of the rights afforded by these statutes. It shall be hand-delivered to the parent, guardian, or surrogate parent or forwarded by certified or registered mail, return receipt requested.

(b) **Mediation.** — Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate parent to attempt to resolve the dispute or disagreement. The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.

(c) **Right of Review.** — The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:

- (1) The child has not been identified or has been incorrectly identified as a child with special needs;
- (2) The child's individualized education plan is not appropriate to meet his needs;
- (3) The child's individualized education plan is not being implemented; or
- (4) The child is otherwise being denied a free, appropriate education.

In addition, a local educational agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child for the purpose of determining whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child.

(d) **Administrative Review.** — Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) **Scope of Review.** — Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the issues for review shall be limited to those set forth in subsection (c).

(f) **Venue of Hearing.** — Notwithstanding the provisions of G.S. 150B-24, the hearing shall be conducted in the county where the child attends school or is entitled to enroll pursuant to G.S. 115C-366.

(g) **Hearing Closed.** — Notwithstanding the provisions of G.S. 150B-23(e), the hearing shall be closed to the public unless the parent, guardian, or surrogate parent, prior to the beginning of the hearing, requests in writing that the hearing be open to the public.

(h) **Recommended Decision.** — Following the hearing, the administrative law judge shall make a recommended decision to the State Board of Education. The recommended decision shall conform to and be prepared in accordance with G.S. 150B-34.

(i) **Final Decision by the State Board of Education.** — The final decision shall be made by the State Board of Education in accordance with G.S. 150B-36. In its discretion, the State Board may appoint a panel of at least two members of the Board to make the final decision for and on its behalf in accordance with G.S. 150B-36, and if the Board elects to exercise its discretion the decision of the panel shall be the final decision.

(j) **Power to Enforce Final Decision.** — The State Board shall have the power to enforce its final decision by ordering a local educational agency:

- (1) To provide a child with an appropriate education;
- (2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
- (3) To reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 in the event it determines that the local educational agency did not offer or provide the child with an appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

(k) **Judicial Review.** — Any party aggrieved by the State Board's decision may seek judicial review in the State courts as provided in Chapter 150B, Article 4 of the General Statutes, or in federal court as provided in 20 U.S.C. § 1415.

(l) **Change in Placement.** — Upon the filing of a petition, no change may be made in the child's status or program by school officials during the period of the administrative review or subsequent judicial review, unless the parent, guardian, or surrogate parent gives written consent. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1.)

Effect of Amendments. — cable to all petitions for review filed on or after that date, rewrote this section.
The 1987 (Reg. Sess., 1988) amendment, effective July 8, 1988, and appli-

ARTICLE 10A.

Testing.

Part 2. Statewide Testing Program.

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

(a) **Annual Testing Program.** — In order to assess the effectiveness of the educational process, and to ensure that each pupil receives the maximum educational benefit from the educational process, the State Board of Education shall implement an annual statewide testing program in basic subjects. It is the purpose of this testing program to help local school systems and teachers identify and correct student needs in basic skills rather than to provide a tool for comparison of individual students or to evaluate teacher performance. The annual testing program shall be conducted each school year for the third, sixth and eighth grades. Students in these grade levels who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing program if special testing procedures are required for testing such students. The State Board of Education shall select annually the type or types of tests to be used in the testing program.

The State Board of Education shall also adopt and provide to the local school administrative units developmentally appropriate indi-

vidualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests. The State Board of Education shall report to the Joint Legislative Commission on Governmental Operations prior to May 1, 1988, and to the Senate and House Appropriations Committees on Education prior to March 1, 1989, on the assessment instruments it develops.

(1977, c. 522, s. 1; c. 541, s. 1; 1981, c. 423, s. 1; 1983, c. 627, s. 1; 1985, c. 409, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1987, c. 738, s. 180(a); 1987 (Reg. Sess., 1988), c. 1086, s. 77(a).)

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

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, rewrote the second paragraph of subsection (a).

ARTICLE 13A.

State Advisory Council on Indian Education.

§ 115C-210. Council established.

There is hereby established an advisory council to the State Board of Education to be known as the "State Advisory Council on Indian Education". (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1084, s. 2 makes this Article effective July 1, 1988.

§ 115C-210.1. Membership — How appointed.

The Council shall consist of 15 members, as follows:

- (a) Two legislative members (one senator appointed by the President of the Senate and one representative appointed by the Speaker of the House);
- (b) Two Indian members from higher education to be appointed by the Board of Governors of the University system;
- (c) One Indian member from the North Carolina Commission on Indian Affairs to be appointed by that Commission;
- (d) Eight Indian parents of students enrolled in public schools and two Indian educators from public elementary/secondary schools to be appointed by the State Board of Education from a list submitted by the North Carolina Commission on Indian Affairs;
- (e) Indian members of the Council shall be broadly representative of North Carolina Indian tribes and organizations, specifically, the Eastern Band of Cherokee, Lumbee, Coharie, Waccamaw-Siouan, Haliwa Saponi, Meherrin, Person County Indians, Cumberland County Association

for Indian People, the Guilford Native American Association, the Metrolina Native American Association, and any other Indian tribe gaining State recognition in the future. (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§ 115C-210.2. Term of office.

The legislative members, the higher education members, and the member from the North Carolina Commission on Indian Affairs shall serve for an unspecified term at the pleasure of their respective appointing authorities. The public school educators and the Indian parents shall each be divided into two classes, with one class being appointed initially for a term of one year and one class being appointed initially for a term of two years. Assignment of initial appointees to classes shall be by lot conducted by the State Board of Education just prior to the initial appointment. All subsequent terms shall be for a period of two years, and no member shall serve for more than two consecutive full terms. (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§ 115C-210.3. Organization, meetings, and compensation.

(a) At its initial meeting, the Council shall elect a chairperson from its membership.

(b) The Council shall meet in space to be provided by the Department of Public Instruction on such dates as are agreed on by the membership from meeting to meeting: provided, however, that the Council shall meet at least three, but no more than four times each year. The Council may meet at emergency meetings called by the chairperson. The Department of Public Instruction shall provide necessary staff support and supplies to enable the Council to carry out its duties in an effective manner.

(c) Council members shall serve without pay, but shall receive travel allowances, lodging, subsistence and per diem as provided by G.S. 138-5. (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§ 115C-210.4. Duties of the Council.

It shall be the duty of the Advisory Council:

(a) To advise the State Board of Education on ways to meet more effectively the educational needs of Indian students;

(b) To advocate meaningful programs to reduce and eventually eliminate low achievement and concurrent high attrition rates among American Indian students;

(c) To prepare an annual report on a fiscal year basis on the status of Indian education, said report to be presented to the State Board of Education and to the various Indian tribal organizations at the statewide Indian Unity Conference;

(d) To work closely with the Division of Indian Education in the Department of Public Instruction to improve coordination and communication between and among programs;

(e) To advise the State Board of Education on any other aspect of Indian education when requested by the State Board to do so. (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§§ 115C-211 to 115C-214: Reserved for future codification purposes.

SUBCHAPTER V. PERSONNEL.

ARTICLE 18.

Superintendents.

§ 115C-275. (Effective February 1, 1989) Vacancies in office of superintendent.

In case of vacancy by death, resignation, or otherwise, in the office of a superintendent, such vacancy shall be filled by the local board of education in which such vacancy occurred. If the vacancy is filled on a temporary basis, subject to the same approvals and to the same educational qualifications as provided for superintendents, the individual appointed to fill the vacancy on a temporary basis shall be paid the salary provided for superintendents. During the time any superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the Superintendent of Public Instruction, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1955, c. 1372, art. 6, s. 2; 1959, c. 573, s. 3; 1977, c. 298; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 11.)

For this section as in effect until February 1, 1989, see the main volume.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective February 1, 1989, deleted “and the con-

troller of the State Board of Education” following “with the approval of the Superintendent of Public Instruction” near the middle of the last sentence.

§ 115C-276. Duties of superintendent.

(k) To Submit Organization Reports and Other Information to the State Board. — Each year the superintendent of each local school administrative unit shall submit to the State Board of Education statistical reports, certified by the chairman of the board of education, showing the organization of the schools in his unit and any additional information the State Board may require. At the end of the second month of school each year, local boards of education, through the superintendent, shall report school organization, employees’ duties, class sizes, and teaching loads to the State Board of

Education as provided in G.S. 115C-47(10). As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(n) **(Effective until February 1, 1989)** To Issue Salary Vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher. The superintendent shall not approve the vouchers for the pay of principals or teachers until the monthly and annual reports required by the local board of education are made.

(n) **(Effective February 1, 1989)** To Issue Salary Vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher. The superintendent shall not approve the vouchers for the pay of principals or teachers until the monthly and annual reports required by the local board of education are made.

(1955, c. 1372, art. 5, s. 24; art. 6, ss. 3-6, 10, 15; art. 17, s. 6; art. 18, s. 7; 1959, c. 1294; 1963, c. 688, s. 3; 1965, c. 584, ss. 5, 6, 16; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, ss. 17, 18, 24; 1987 (Reg. Sess., 1988), c. 1025, s. 12; c. 1086, s. 89(c).)

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

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988),

c. 1025, s. 12, effective February 1, 1989, deleted "controller of the" preceding "State Board of Education" at the end of the first sentence of subsection (n).

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 89(c), effective July 1, 1988, rewrote subsection (k).

ARTICLE 20.

Teachers.

§ 115C-296. Board sets certification requirements.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or

graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972: Provided, further, that the State Board of Education shall not decrease the certification standards for physical education teachers or health education teachers below the standards in effect on June 1, 1988.

(1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 6; 1987 (Reg. Sess., 1988), c. 1086, s. 96.)

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

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, added the proviso at the end of subsection (a).

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

(a) **Request for Funds.** — The State Board of Education, based upon the reports of local boards of education and such other information as the State Board may require from local boards, shall determine for each local school administrative unit the number of teachers and other instructional personnel to be included in the State budget request.

(b) **Allocation of Positions.** — The State Board of Education is authorized to adopt rules to allot instructional personnel and teachers, within funds appropriated.

(c) **Maximum Class Size.** — The average class size for each grade span in a local school administrative unit shall at no time exceed the funded allotment ratio of teachers to students. At the end of the second school month and for the remainder of the school year, the size of an individual class shall not exceed the allotment ratio by more than three students. At no time may the General Assembly appropriate funds for higher unit-wide class averages than those for which State funds were provided during the 1984-85 school year.

(d) **Maximum Teaching Load.** — Students shall be assigned to classes so that from the 15th day of the school year through the end of the school year the number of students for whom teachers in grades 7 through 12 are assigned teaching responsibilities during the course of the day is no more than 150 students, except as provided in subsection (g) of this section.

(e) **Alternative Maximum Class Sizes.** — The State Board of Education, in its discretion, may set higher maximum class sizes and daily teaching loads for classes in music, physical education, and other similar subjects, so long as the effectiveness of the instructional programs in those areas is not thereby impaired.

(f) **(Effective until February 1, 1989) Second Month Reports.** — At the end of the second month of each school year, each local board of education, through the superintendent, shall file a report for each school within the school unit with the State Board of Educa-

tion. The report shall be filed in a format prescribed by the Controller of the State Board of Education and shall include the organization for each school, the duties of each teacher, the size of each class, the teaching load of each teacher, and such other information as the State Board or Controller may require. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(f) **(Effective February 1, 1989) Second Month Reports.** — At the end of the second month of each school year, each local board of education, through the superintendent, shall file a report for each school within the school unit with the State Board of Education. The report shall be filed in a format prescribed by the State Board of Education and shall include the organization for each school, the duties of each teacher, the size of each class, the teaching load of each teacher, and such other information as the State Board may require. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(g) **Waivers and Allotment Adjustments.** — Local boards of education shall report exceptions to the State Board of Education as provided in G.S. 115C-47(10), and shall request allotment adjustments or waivers from the standards set out above. Within 45 days of receipt of reports, the State Board of Education, within funds available, may allot additional positions or grant waivers for the excess class size or daily load.

(1) If the exception resulted from (i) exceptional circumstances, emergencies, or acts of God, (ii) large changes in student population, (iii) organizational problems caused by remote geographic location, or (iv) classes organized for a solitary curricular area, and

(2) If the local board cannot organizationally correct the exception.

All allotment adjustments and waivers submitted under this provision shall be reported to the Director of the Budget and to the General Assembly by May 15 of each year.

(h) **State Board Rules.** — The State Board of Education shall adopt rules necessary for the implementation of class size and teaching load provisions.

(i) **Penalty for Noncompliance.** — If the State Board of Education determines that a local superintendent has willfully failed to comply with the requirements of this section, no State funds shall be allocated to pay the superintendent's salary for the period of time the superintendent is in noncompliance. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, ss. 12, 13; 1985, c. 479, s. 55(b)(3)b; 1987, c. 738, s. 181; 1987 (Reg. Sess., 1988), c. 1025, s. 15; c. 1086, s. 89(a).)

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 89(a), effective July 1, 1988, rewrote this section.

Session Laws 1987 (Reg. Sess., 1988), c. 1025, s. 15, effective February 1, 1989, deleted two references to the Controller of the State Board of Education in the second sentence of subsection (f).

ARTICLE 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(n) Appeal. — Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (l) of this section, or who has been suspended without pay pursuant to G.S. 115C-325(a)(4), shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the teacher is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board. A teacher who has been demoted or dismissed and who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109.)

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

Pilot Program Applicable to Local School Administrative Units with More Than 70,000 Students. — Session Laws 1987, (Reg. Sess., 1988), c. 1036, s. 1 amends Session Laws 1983, c. 394, s. 6, as rewritten and amended in 1985 and 1987, as noted under this sec-

tion in the main volume, by extending the expiration date to July 1, 1989.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "superior court district or set of districts as defined in G.S. 7A-41.1" for "judicial district" in the first sentence of subsection (n).

CASE NOTES

II. PROBATIONARY TEACHERS.

Criteria for Renewal of Contract of Probationary Teacher Who Serves as Coach. — Given the broad legislative grant of authority over the status of probationary teachers and the legislative grant to local boards under § 115C-47(4), requiring them to promulgate rules and regulations for interscholastic athletics, a board may properly consider coaching changes as a basis for determining whether to renew a proba-

tionary teacher's contract when the teacher also serves as a coach. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

Nonrenewal Must Have Non-Arbitrary Basis. — The discretion of school boards regarding the status of probationary teachers remains very broad, but a nonrenewal decision must have some non-arbitrary basis in order to comply with subdivision (m)(2) of this section. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

An arbitrary or capricious reason is one without any rational basis in the record, such that a decision made thereon amounts to an abuse of discretion. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

Whether school board's action in not renewing contracts was "arbitrary or capricious" is a mixed question of law and fact. The jury determines the factual issues involved and the judge applies these findings to determine whether the nonrenewals were arbitrary or capricious as a matter of law. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

Burden of Proof. — Section 115C-44(b) clearly places the burden of

proof on plaintiff probationary school teachers to establish that the actions of the board in failing to renew their contracts were arbitrary or capricious. Moreover, the burden of proof includes not only the burden of going forward with the evidence, but also the burden of persuasion. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

Nonrenewals Upheld. — Evidence was not sufficient to support a finding that nonrenewals of probationary teachers' contracts were "arbitrary or capricious," and instead established a rational basis for the nonrenewals. *Abell v. Nash County Bd. of Educ.*, — N.C. App. —, 365 S.E.2d 706 (1988).

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 2. Budget.

§ 115C-432. **The budget resolution; adoption; limitations; tax levy; filing.**

(d) **(Effective until February 1, 1989)** The budget resolution shall be entered in the minutes of the board of education, and within five days after adoption, copies thereof shall be filed with the superintendent, the school finance officer and the county finance officer. The board of education shall file a copy of the budget as approved and a copy of the budget resolution with the Controller of the State Board of Education.

(d) **(Effective February 1, 1989)** The budget resolution shall be entered in the minutes of the board of education, and within five days after adoption, copies thereof shall be filed with the superintendent, the school finance officer and the county finance officer. The board of education shall file a copy of the budget as approved and a copy of the budget resolution with the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 13.)

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

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective

February 1, 1989, deleted "Controller of the" preceding "State Board of Education" at the end of the second sentence of subsection (d).

Part 3. Fiscal Control.

§ 115C-438. (Effective February 1, 1989) Provision for disbursement of State money.

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The State Board of Education shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The State Board of Education may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue. The State Board of Education shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State Board.

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1987, c. 414, s. 14; 1987 (Reg. Sess., 1988), c. 1025, s. 15.)

For this section as in effect until February 1, 1989, see the main volume.

Effect of Amendments. —

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

ment, effective Feb. 1, 1989, substituted reference to the State Board of Education for reference to the Controller thereof throughout this section.

§ 115C-447. (Effective February 1, 1989) Annual independent audit.

Each local school administrative unit shall have its accounts and the accounts of individual schools therein audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor who audits the accounts of a local school administrative unit shall also audit the accounts of its individual schools. The auditor shall be selected by and shall report directly to the board of education. The audit contract shall be in writing, shall include all its

terms and conditions, and shall be submitted to the Secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The financial statements accompanying the auditor's report shall be prepared in conformity with generally accepted accounting principles. The auditor shall file a copy of the audit report with the Secretary of the Local Government Commission, the State Board of Education, the board of education and the board of county commissioners, and shall submit all bills or claims for audit fees and costs to the Secretary of the Local Government Commission for his approval. It shall be unlawful for any local school administrative unit to pay or permit the payment of such bills or claims without this approval. Each officer, employee and agent of the local school administrative unit having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a board of education or any other public officer, employee or agent shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or both, in the discretion of the court.

The State Auditor shall have authority to prescribe the manner in which funds disbursed by administrative units by warrants on the State Treasurer shall be audited. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1983, c. 913, s. 17; 1987 (Reg. Sess., 1988), c. 1025, s. 14.)

For this section as in effect until February 1, 1989, see the main volume.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective

February 1, 1989, deleted "Controller of the" preceding "State Board of Education" in the seventh sentence of the first paragraph.

§ 115C-452. Fines and forfeitures.

CASE NOTES

The term "penal laws," as used in the context of this section, means laws that impose a monetary payment for their violation. The payment is punitive rather than remedial in nature and is intended to penalize the wrongdoer rather than to compensate a particular party. *Mussallam v. Mussallam*, — N.C. —, 364 S.E.2d 364 (1988).

Two Distinct Funds for Public Schools. — The provisions of this section relating to the clear proceeds from penalties, forfeitures and fines identify two distinct funds for the public schools. These are (1) the clear proceeds of all

penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the state; and (2) the clear proceeds of all fines collected for any breach of the criminal laws. *Mussallam v. Mussallam*, — N.C. —, 364 S.E.2d 364 (1988).

Proceeds of Bond Payable to Board of Education. — In custody case in which wife sought to regain custody of child who had been removed outside the country, bond set by superior court judge was to ensure husband's appearance, as the punishment for his failure to so appear would be immediate forfeiture of

the bond, and since the terms of the bond specifically made its proceeds payable to the State of North Carolina should it be forfeited, such bond was penal in nature and accrued to the Board

of Education. *Mussallam v. Mussallam*, — N.C. —, 364 S.E.2d 364 (1988), reversing 83 N.C. App. 213, 349 S.E.2d 618 (1986), annotated under this section in the main volume.

SUBCHAPTER IX. PROPERTY.

ARTICLE 37.

School Sites and Property.

§ 115C-524. Repair of school property; use of buildings for other than school purposes.

CASE NOTES

The county school board's action to recover lost tax dollars expended in removing asbestos from school property was a governmental function exercised in pursuit of a sovereign purpose for the public good on behalf of the

State, and the action was not barred by the statute of limitations. *Rowan County Bd. of Educ. v. United States Gypsum Co.*, 87 N.C. App. 106, 359 S.E.2d 814 (1987).

ARTICLE 38.

State Insurance of Public School Property.

§ 115C-541. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local school administrative units; disbursement of funds.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school administrative units, the Fund shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which the Fund is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and the Fund shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties of the local school administrative units, to

the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education, one by the local board of education having charge of the property, and the two so appointed shall select a third, all of whom shall be disinterested persons, and qualified from experience to appraise and value such property: Provided, however, if the appraisers appointed by the State Board of Education and the local board of education shall fail for 15 days to agree upon the third appraiser, then, on request of the State Board of Education or the local board of education having charge of the property, such third appraiser shall be selected by any regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the property is located. The appraisers so named shall file their written report with the State Board of Education and with the local board of education having such property in charge. The costs of the appraisal shall be paid by the Fund. Upon the determination of the loss by the appraisers, the State Board of Education shall pay the amount of such loss or damage to school property in the control of the local school administrative unit to its treasurer, upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasurer of said units, as provided by this Chapter for the disbursement of the funds of such unit. (1955, c. 1372, art. 16, s. 7; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 110.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted “any regular resident superior court judge of the superior court district or set of districts

as defined in G.S. 7A-41.1” for “the resident judge of the superior court of the judicial district” near the end of the proviso at the end of the first sentence of the second paragraph.

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

ARTICLE 39.

Nonpublic Schools.

Part 3. Home Schools.

§ 115C-563. Definitions.

As used in this Part or Parts 1 and 2 of this section [Article]:

(a) “Home school” means a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents or legal guardians, or a member of either household.

(b) “Duly authorized representative of the State” means the Director, Division of Nonpublic Education, or his staff. (1987 (Reg. Sess., 1988), c. 891, s. 1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 891, s. 2 makes this Part effective upon ratification. The act was ratified June 20, 1988.

The words "this section" in the introductory language of this section were apparently intended to read "this Article."

§ 115C-564. Qualifications and requirements.

A home school shall make the election to operate under the qualifications of either Part 1 or Part 2 of this Article and shall meet the requirements of the Part elected, except that any requirement related to safety and sanitation inspections shall be waived if the school operates in a private residence and except that testing requirements in G.S. 115C-549 and G.S. 115C-557 shall be on an annual basis. The persons providing academic instruction in a home school shall hold at least a high school diploma or its equivalent. (1987 (Reg. Sess., 1988), c. 891, s. 1.)

§ 115C-565. Requirements exclusive.

No school which complies with this Part shall be subject to any other provision of law relating to education except requirements of law respecting immunization. (1987 (Reg. Sess., 1988), c. 891, s. 1.)

§§ 115C-566, 115C-567: Reserved for future codification purposes.

Chapter 115D. Community Colleges.

Article 1.

General Provisions for State Administration.

Sec.

115D-2.1. State Board of Community
Colleges.

Article 2.

Local Administration.

Sec.

115D-12. Each institution to have
board of trustees; selection
of trustees.

ARTICLE 1.

General Provisions for State Administration.

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

(g) The State Board of Community Colleges shall meet at stated times established by the State Board, but not less frequently than 10 times a year. The State Board of Community Colleges shall also meet with the State Board of Education and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). Special meetings of the State Board may be set at any regular meeting or may be called by the chairman. A majority of the qualified members of the State Board shall constitute a quorum for the transaction of business.

(1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474; 1983, c. 311; c. 479, ss. 1-3; 1985, c. 227, ss. 1-5; c. 428; 1987 (Reg. Sess., 1988), c. 1102, s. 2.)

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

Effect of Amendment. — The 1987

(Reg. Sess., 1988) amendment, effective July 1, 1987, added the present second sentence of subsection (g).

ARTICLE 2.

Local Administration.

§ 115D-12. Each institution to have board of trustees; selection of trustees.

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school admin-

istrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three — four trustees, appointed by the Governor.

Group Four — the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23; 1977, c. 823, ss. 104; 1979, c. 462, s. 2; 1985, c. 757, s. 147; 1987, c. 564, ss. 10, 12; 1987 (Reg. Sess., 1988), c. 1037, s. 111.)

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "superior court district or set of

districts as defined in G.S. 7A-41.1" for "judicial district" in the paragraph of subsection (a) relating to Group Two.

§ 115D-20. Powers and duties of trustees.

Cross References. — As to information and financial assistance for nursing

students and inactive nurses, see Article 9B of Chapter 90, § 90-171.50 et seq.

ARTICLE 4A.

Budgeting, Accounting, and Fiscal Management.

§ 115D-58.1. Federal contracts and grants.

Local Modification. — Haywood Chowan Community College: 1987 (Reg. Community College and Roanoke- Sess., 1988), c. 907.

Chapter 116. Higher Education.

Article 1.

The University of North Carolina.

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

Sec.

116-9. Meetings of Board of Governors.

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

Cross References. — As to information and financial assistance for nursing students and inactive nurses, see Article 9B of Chapter 90, § 90-171.50 et seq.

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

§ 116-3. Incorporation and corporate powers.

Editor's Note. — The case of *Mayberry v. Dees*, 638 F.2d 690 (4th Cir. 1981), which is annotated under this section in the main volume, originally appeared in the advance sheets as 638 F.2d 690. However, that opinion was withdrawn and the case was reheard and reconsidered by a reconstituted panel, which issued a new opinion at 663 F.2d 502 (4th Cir. 1981).

§ 116-9. Meetings of Board of Governors.

The Board of Governors shall meet at stated times established by the Board, but not less frequently than six times a year. The Board of Governors shall also meet with the State Board of Education and the State Board of Community Colleges at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). A quorum for the conduct of business shall consist of a majority of the members. (1971, c. 1244, s. 1; 1987 (Reg. Sess., 1988), c. 1102, s. 3.)

Effect of Amendments. — The 1987 July 1, 1987, added the present second (Reg. Sess., 1988) amendment, effective sentence.

Chapter 116B.

Escheats and Abandoned Property.

Article 2. Abandoned Property.	Sec.
Sec. 116B-12. Property held by financial institutions.	116B-30. Preparation of list of owners by State Treasurer.
116B-13. Property held by life insurers.	116B-31. Payment or delivery of abandoned property.
116B-14. Property held by other insurers.	116B-31.1 to 116B-31.4. [Reserved.] 116B-31.5. Voluntary early delivery.
Article 3. Administration of Abandoned Property.	116B-38. Claim for abandoned property paid or delivered.
116B-29. Report of abandoned property by holder to Treasurer.	116B-42. Rules.

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 for-

ward 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

October 1, 1988

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1988 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