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IE GENERAL STATUTES OF NORTH CAROLINA

1979 SUPPLEMENT

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JAN 28 1980

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

Under the Direction of
D. P. Harriman, S. C. Willard and Sylvia Faulkner

Volume 3C

1978 Replacement

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

Place in Pocket of Corresponding Volume of Main Set.

THE MICHIE COMPANY

Law Publishers
Charlottesville, Virginia
1979

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Preface

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

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

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

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

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

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

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Scope of Volume

Statutes:

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Annotations:

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North Carolina Reports through volume 297, p. 304.

North Carolina Court of Appeals Reports through volume 41, p. 192.

Federal Reporter 2nd Series volumes through volume 597, p. 283.

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Supreme Court Reporter through volume 99.

North Carolina Law Review.

Wake Forest Intramural Law Review.

Duke Law Journal.

North Carolina Central Law Journal.

Opinions of the Attorney General.

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Federal Supplement through volume 459- p. 138.

Servence Could Reporter through volume 95.
North Carolina Law Review

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VOLUME 3C

Chapter 138.

Salaries, Fees and Allowances.

Sec.

Sec. 138-5. Per diem and allowances of State boards, 138-7. Exceptions to §§ 138-5 and 138-6.

138-6. Travel allowances of State officers and employees.

§ 138-5. Per diem and allowances of State boards, etc. — (a) Except as provided in subsections (c) and (f) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

(1) Compensation at the rate of fifteen dollars (\$15.00) per diem for each day

of service;

(2) A subsistence allowance of

a. Fifteen dollars (\$15.00) per day for each day of service when the member did not spend the night away from his home,

b. Thirty-five dollars (\$35.00) per day for each day of service when the

member spent the night away from his home;

(3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).

(4) For convention registration fees, the actual amount expended, as shown

by receipt.

(b) Except as provided in subsections (c) and (f) of this section, the schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer, excluding those boards, commissions, committees and councils the members of which are now serving without compensation and excluding occupational licensing boards as defined in G.S. 93B-1; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(c) Members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowances as are provided for members of the General Assembly for

services on interim legislative committees.

(d) The subsistence allowances provided in this section shall be paid without requiring the claimant to file any vouchers covering actual expenditures for

meals or lodging.

(e) Out-of-state travel on official business by members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget.

(f) Members of all State boards, commissions and councils whose salaries or any portion of whose salaries are paid from State funds shall receive no per diem compensation from State funds for their services; provided, however, that members of State boards, commissions and councils who are also members of the General Assembly shall receive, when the General Assembly is not in session, subsistence and travel allowances at the rate set forth in G.S. 120-3.1(4) [120-3.1(a)(4)]. (1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397; 1979, c. 838, s. 18.)

Editor's Note. - The 1979 amendment, effective July 1, 1979, added subsection (f), and near the beginning of the first sentences in subsections (a) and (b), inserted "and (f)" after

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 138-6. Travel allowances of State officers and employees. — (a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, nineteen cents (19φ)

per mile of travel and the actual cost of tolls paid;

(2) For bus, railroad, Pullman, or other conveyance, actual fare;

(3) In lieu of actual expenses incurred for subsistence, payment of thirty-one dollars (\$31.00) per day when traveling in-state or thirty-nine dollars (\$39.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget.

(4) For convention registration fees not to exceed thirty dollars (\$30.00) per convention. (1977, 2nd Sess., c. 1136, s. 38.1; c. 1237, ss. 1, 2; 1979, c. 34,

s. 1; c. 1002, s. 1; c. 1050, s. 1.)

Editor's Note. -

The first 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "seventeen cents (17ϕ) " for "fifteen cents (15ϕ) " in subdivision (a)(1).

The second 1977, 2nd Sess., amendment, effective July 1, 1978, increased the amounts in the first sentence of subdivision (a)(3) from \$23.00 to \$27.00 and from \$35.00 to \$39.00 and increased the amount in subdivision (a)(4) from

\$15.00 to \$30.00.

The first 1979 amendment, effective July 1, 1979, deleted the former last sentence of subdivision (a)(3), which read: "This shall not apply to those employees who are employed by the North Carolina State Burial Association Commission.'

The second 1979 amendment, effective July 1. 1979, increased the reimbursement rate for

transportation by privately owned automobile, in subdivision (1) of subsection (a), from 17¢ to 19¢ per mile.

The third 1979 amendment, effective July 1, 1979, increased the in-state subsistence allowance in subdivision (3) of subsection (a) from \$27.00 to \$31.00.

Session Laws 1977, 2nd Sess., c. 1237, s. 3, provides: "The heads of departments shall administer the provisions of Section 1 and Section 2 above [subdivisions (3) and (4) of this section] in a manner to assure that these provisions are funded from within existing authorized budgets."

Session Laws 1977, 2nd Sess., c. 1136, s. 45,

contains a severability clause.

As subsection (b) was not changed by the amendments, it is not set out.

§ 138-7. Exceptions to §§ 138-5 and 138-6. — Expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 for travel and subsistence may be reimbursed if the prior approval of the department head is obtained. The Director of the Budget shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances

and convention registration fees as prescribed in G.S. 138-5 and 138-6 may be authorized by department heads for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business. (1961, c. 833, s. 6.1; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, s. 3; 1973, c. 595, c. 2; 1979, c. 838, s. 17.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, added the first sentence, deleted "with the approval of the Advisory Budget Commission" after "Budget" near the beginning of the second sentence, and deleted the former third sentence which read: "No expenditures in excess of the maximum amounts

set forth in G.S. 138-5 and 138-6 shall be reimbursed unless the head of the State department, agency or institution involved has secured the approval of the Director of the Budget prior to the making of such expenditures."

Session Laws 1979, c. 838, s. 122, contains a severability clause.

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

members; certain duties.

139-7. District board of supervisors appointive members; organization of board; certain powers and duties.

Article 3. Watershed Improvement Programs; Expenditure by Counties.

139-48 to 139-52. [Reserved.]

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139-6. District board of supervisors — elective 139-53. State Soil and Water Conservation Commission authorized to accept applications.

139-54. Purposes for which grants may be requested.

139-55. Review of applications.

139-56. Recommendation of priorities and disbursal of grant funds.

139-57. Availability of funds.

ARTICLE 1.

General Provisions.

§ 139-6. District board of supervisors — elective members; certain duties. - After the issuance of the certificate of organization of the soil conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections. No absentee ballots shall be permitted in the election.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars (\$5.00) at the time he files the notice of candidacy. Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years,

and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

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The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4; 1979, c. 519, s. 1.)

Editor's Note. —
The 1979 amendment added the second sentence of the fifth paragraph.

§ 139-7. District board of supervisors — appointive members; organization of board; certain powers and duties. — The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the elective supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but

In those districts composed of four or more counties, the Commission may, but is not required, to appoint one person from the district without recommendation from the elective supervisors, to serve as a district supervisor along with the elected members of the board of supervisors. Such appointment shall be made at the same time other appointments are made under this section, and the person

appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the

provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of Natural Resources and Community

Development.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for

no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply,

or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, a 481; 1947, c. 31, ss. 6, 7; 1957, c. 1974, a 21, 1969, a 562; 1977, a 562, c. 481; 1947, c. 31, ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563; 1973, c. 502, s. 2; c. 1262, s. 38; 1977, c. 387; c. 771, s. 4; 1979, c. 519, s. 2.)

Editor's Note.

The 1979 amendment inserted "from the district" near the end of the second sentence of the first paragraph, inserted "the office shall be deemed vacant on the date the term is set to

expire and" near the beginning of the third sentence of that paragraph, and substituted "person from the district" for "district supervisor" near the middle of the first sentence of the second paragraph. dependent of the property of t

ARTICLE 3.

Watershed Improvement Programs; Expenditure by Counties.

§§ 139-48 to 139-52: Reserved for future codification purposes.

ARTICLE 4.

Grants for Small Watershed Projects.

- § 139-53. State Soil and Water Conservation Commission authorized to accept applications. The State Soil and Water Conservation Commission is accept applications. — The State Soil and Water Conservation Commission is authorized to accept applications for grants for nonfederal costs relating to small watershed projects authorized under Public Law 566 (83rd Congress as amended) from local sponsors of such projects properly organized under the provisions of either Chapter 156 of the General Statutes of North Carolina or Chapter 139 of the General Statutes of North Carolina. Applications shall be made on forms prescribed by the Commission. (1977, 2nd Sess., c. 1206.)
- § 139-54. Purposes for which grants may be requested. Applications for grants may be made for the nonfederal share of small watershed projects for the following purposes in amounts not to exceed the precentage of the nonfederal costs indicated:

(1) Land rights acquisition for impounding or retarding water — fifty

percent (50%);

(2) Engineering fees — fifty percent (50%);
(3) Anticipated future and present water supply needs in conjunction with watershed improvement works or projects as described in G.S. 139-37.1 — fifty percent (50%);

(4) Installation of recreational facilities and services (to include land acquisition) as described in G.S. 139-46 — fifty percent (50%);

(5) Construction costs for water management (drainage or irrigation) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66) 2/3%);

(6) Conservation and replacement of fish and wildlife habitat as described in G.S. 139-46 — seventy-five percent (75%). (1977, 2nd Sess., c. 1206;

1979, c. 1046, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "including utility and road relocations not funded by the

State Department of Transportation — sixty-six and two-thirds percent (66 2/3%)" for "— fifty percent (50%)" at the end of subdivision (5).

§ 139-55. Review of applications. — (a) The State Soil and Water Conservation Commission shall receive and review applications for grants for small watershed projects authorized under Public Law 566 (83rd Congress, as amended) and approve, approve in part, or disapprove all such applications.

(b) In reviewing each application, the State Soil and Water Conservation

Commission shall consider:

(1) The financial resources of the local sponsoring organization;

(2) Nonstructural measures such as sediment control ordinances and flood plain zoning ordinances enacted and enforced by local governments to alleviate flooding;

(3) Regional benefits of projects to an area greater than the area under jurisdiction of the local sponsoring organization;
(4) Any direct benefit to State-owned lands and properties. (1977, 2nd Sess.,

c. 1206.)

§ 139-56. Recommendation of priorities and disbursal of grant funds. Whenever two or more applications for grants are approved in whole or in part, the State Soil and Water Conservation Committee shall establish priorities among the several applications for disbursal of grant funds. To the extent that funds are available, the State Soil and Water Conservation Commission may authorize the disbursal of grant funds to the applicants consistent with the established priorities. The State Soil and Water Conservation Commission shall promulgate regulations to provide for an audit of grant funds to assure that they are spent for the purposes delineated in the application. Established priorities may be reviewed from time to time and revised if circumstances warrant such revision. (1977, 2nd Sess., c. 1206.)

§ 139-57. Availability of funds. — All grants shall be contingent upon the availability of funds for disbursement to applicants. At the end of each fiscal year the State Soil and Water Conservation Commission shall notify all applicants whose applications have been approved and to whom grant funds have not been disbursed of the status of their application. At the time of notification the State Soil and Water Conservation Commission shall notify the applicants of the availability of funds for grants in the upcoming fiscal year and at the same time shall notify the applicants of their position on any priority list that may have been established for the disbursal of grant funds for small watershed projects. (1977, 2nd Sess., c. 1206.)

Chapter 141.

State Boundaries.

Sec.

141-7.1. Southern lateral seaward boundary.

§ 141-7.1. Southern lateral seaward boundary. — The lateral seaward boundary between North Carolina and South Carolina from the low-water mark of the Atlantic Ocean shall be and is hereby designated as a continuation of the North Carolina-South Carolina boundary line as described by existing monuments located at Latitude 33° 51′ 50.721″ North, Longitude 78° 33′ 22.9448″ West and Latitude 33° 51′ 36.4626″ North, Longitude 78° 33′ 06.1937″ West, in a straight line projection of said line to the seaward limits of the States' territorial jurisdiction, such line to be extended on the same bearing insofar as a need for further delimitation may arise. (1979, c. 894.)

Editor's Note. — Session Laws 1979, c. 894, s. 2, provides: "This act shall become effective upon ratification and with approval thereof, and concurrence therein, by the State of South Carolina and upon the approval and consent to this act by the Congress of the United States; provided, that this act shall stand repealed if the

State of South Carolina and the Congress of the United States do not ratify, confirm, adopt, or otherwise consent to the effect of the act establishing the lateral seaward boundary between North Carolina and South Carolina by January 1, 1985."

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State and Certain Local Educational Entity Employees, Nonsalaried Public Officials, and Legislators Required to Repay Money Owed to State.

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ARTICLE 1.

Executive Budget Act.

§ 143-16.1. Federal funds. — All federal funds shall be expended and reported in accordance with provisions of the Executive Budget Act. Proposed budgets recommended to the General Assembly by the Governor and Advisory Budget Commission shall include all appropriate information concerning the federal expenditures in State agencies, departments and institutions, (1977, 2nd Sess., c. 1219, s. 45.)

Editor's Note. — Session Laws 1977, 2nd Session Laws 1977, 2nd Sess., c. 1219, s. 57, Sess., c. 1219, s. 59, makes the act effective July contains a severability clause. 1, 1978.

§ 143-27.2. Severance wages for certain State employees. — The Director of the Budget, upon written request of a State department and recommendations of the State Personnel Officer, is authorized to pay severance wages to a State employee when employment is terminated as the result of the closing of a State institution. (1979, c. 838, s. 22.)

Editor's Note. - Session Laws 1979, c. 838, s. 123, makes this section effective July 1, 1979.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 143-31.3. Grants to nonstate health and welfare agencies. — Nonstate health and welfare agencies shall submit their appropriation requests for grants-in-aid through the Secretary of the Department of Human Resources for recommendations to the Director of the Budget and the Advisory Budget Commission and the General Assembly, and agencies receiving these grants, at the request of the Secretary of the Department of Human Resources, shall provide a postaudit of their operations that has been done by a certified public accountant. (1979, c. 838, s. 35.)

Editor's Note. — Session Laws 1979, c. 838, s. 123, makes this section effective July 1, 1979.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

ARTICLE 1.1.

Periodic Review of Certain State Agencies.

§ 143-34.10. Findings and purposes.

Editor's Note. -

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Review of Coastal Resources Commission. -Under the "Sunset" legislation, entitled "Periodic Review of Certain State Agencies," § 143-34.10 et seq., the Coastal Resources Commission is subjected to review by the

Evaluations Governmental Commission, § 143-34.16 and 143-34.17; to public hearings held by the Governmental Evaluations Commission, § 143-34.18; and to hearings and recommendations of legislative committees, § 143-34.19. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 143-34.11. Certain General Statutes provisions repealed effective July 1, 1979. — The following statutes are repealed effective July 1, 1979, (except for purposes of the winding-up period, as provided by section 5 of this act):
Chapter 87, Article 3, entitled "Tile Contractors."
Chapter 87, Article 6, entitled "Water Well Contractors."
Chapter 66, Article 9A, entitled "Private Detectives."
Chapter 93C, entitled "Watchmakers."

Chapter 74, Article 6, entitled "Mining Registration." (1977, c.712, s. 2; 1979, c. 616, s. 9; c. 629; c. 712, s. 6; c. 713, s. 9; c. 736, s. 1; c. 740, s. 1; c. 744, ss. 1-3; c. 750, s. 1; c. 780, s. 3; c. 819, s. 7; c. 834, s. 13; c. 871, s. 2; c. 872, s. 6; c. 904, s. 15.)

Cross Reference. — For statute placing a "sunset date" of July 1, 1980, on the Board of Directors of the North Carolina Specialty Hospitals, see § 143B-173, subdivision (a)(1).

Editor's Note. - Session Laws 1979, c. 616, deleted Chapter 93A, "Real Estate Brokers and Salesmen," from the list of repealed statutes. Session Laws 1979, c. 629, deleted Chapter

143B, Article 2, Part 6, "Public Librarian Certification Commission," § 125-9, "Librarian certification," and § 125-10, "Temporary certificates for public librarians," from the list of repealed statutes.

Session Laws 1979, c. 712, deleted Chapter 87, Article 5, "Refrigeration Contractors," from the

list of repealed statutes.

Session Laws 1979, c. 713, deleted Chapter 87, Article 1, "General Contractors," from the list of repealed statutes.

Session Laws 1979, c. 736, deleted Chapter 143, Article 21, Part 3, "Dam Safety," from the list of repealed statutes.

Session Laws 1979, c. 740, deleted Chapter 143B, Article 7, Part 6, "North Carolina Mining Commission," from the list of repealed statutes.

Session Laws 1979, c. 744, transferred the following statutes from this section § 143-34.12:

Chapter 78A, Article 5, "Registration of Dealers and Salesmen" (of securities). Chapter 81A, Article 5, "Public

Weightmasters.'

Chapter 95, Article 15, "Passenger Tramways."

Chapter 74, Article 7, "The Mining Act of 1971."

Chapter 113A, Article 4, "Sedimentation Pollution Control Act of 1973."

Chapter 84, Article 4, "North Carolina State Bar." Chapter 85C,

"Bail Bondsmen and Runners."

Chapter 90A, Article 2, "Water Treatment Facility Operators." Chapter 90A, Article 3, "Wastewater

Treatment Plant Operators." Chapter 93, entitled "Public Accountants."

Chapter 143B, Article 7, Part 8, "Sedimentation Control Commission."

Chapter 143B, Article 7, Part 9, "Wastewater Treatment Plant Operators Certification Commission."

§§ 76-1 through 76-12, relating to a board of commissioners of navigation and pilotage for the Cape Fear River and Bar.

Chapter 76, Article 6, "Morehead City Navigation and Pilotage Commission." Session Laws 1979, c. 744, also deleted Chapter 90A, Article 1, "Sanitarians," in this section and added in § 143-34.12, "The Article in G.S. Chapter 90A concerning Sanitarians" and deleted in this section Chapter 71, Article 2, "North Carolina Commission on Indian Affairs," and added in § 143-34.12, Chapter 143B, Article 9, Part 15, "North Carolina State Commission on Indian Affairs."

Session Laws 1979, c. 750, transferred Chapter 93, "Public Accountants," from this

section.

Session Laws 1979, c. 780, deleted Chapter 95, Article 5, "Regulation of Employment Agencies," from the list of repealed statutes. Session Laws 1979, c. 780, which also rewrote Article 5 of Chapter 95, provides, in s. 4: "This

Article shall become effective on July 1, 1979.

Session Laws 1979, c. 819, deleted Chapter 89C, "Engineering and Land Surveying," from the list of repealed statutes.

Session Laws 1979, c. 834, deleted Chapter 87, Article 2, entitled "Plumbing and Heating Contractors" from the list of repealed statutes.

Session Laws 1979, c. 871, deleted Chapter 83, "Architects," from the list of repealed statutes.

Session Laws 1979, c. 872, deleted Chapter 89A entitled "Landscape Architects," from the list of repealed statutes. Session Laws 1979, c. 872, which also amended §§ 89A-3 through 89A-6, provides, in s. 7: "This Chapter is repealed effective July 1, 1981, subject to continuation for one year after that date for a 'winding-up' period pursuant to the provisions of G.S. 143-34.14."

Session Laws 1979, c. 904, deleted Chapter 87, Article 4, entitled "Electrical Contractors" from the list of repealed statutes.

§ 143-34.12. Certain General Statutes provisions repealed effective July 1, **1981.** — The following statutes are repealed effective July 1, 1981, (except for purposes of the winding-up period, as provided by G.S. 143-34.14): Chapter 90, Article 1, entitled "Practice of Medicine." Chapter 90, Article 2, entitled "Dentistry."

Chapter 90, Article 4, entitled "Pharmacy." Chapter 90, Article 6, entitled "Optometry." Chapter 90, Article 7, entitled "Osteopathy." Chapter 90, Article 8, entitled "Chiropractic."

Chapter 90, Article 9, entitled "Nurse Practice Act."

Chapter 90, Article 10, entitled "Midwives," and Chapter 130, Article 18, entitled "Midwives."

Chapter 90, Article 11, entitled "Veterinarians." Chapter 90, Article 12A, entitled "Podiatrists."

Chapter 90, Article 13A, entitled "Practice of Funeral Service."

Chapter 90, Article 16, entitled "Dental Hygiene Act." Chapter 90, Article 17, entitled "Dispensing Opticians." Chapter 90, Article 18, entitled "Physical Therapy."

Chapter 90, Article 18A, entitled "Practicing Psychologists."

Chapter 90, Article 20, entitled "Nursing Home Administration Act." Chapter 86, entitled "Barbers."

Chapter 88, entitled "Cosmetic Art."

Chapter 108, Article 3, Part 2, entitled "Licensing of Private Institutions (maternity homes, homes for the aged and infirm, private child-care institutions).'

Chapter 110, Article 3, entitled "Control over Child-Caring Facilities," and Article 7, entitled "Day-Care Facilities."

Chapter 143B, Article 9, Part 4, entitled "Child Day-Care Licensing Commission.

Chapter 122, Article 2E, entitled "Licensing of Local Mental Health Facilities."

G.S. 122-72, entitled "Licensing and Control of Local Mental Institutions and Homes.'

Chapter 130, Article 26, entitled "Regulation of Ambulance Services."

Chapter 131, Article 13A, entitled "Hospital Licensing Act."

Chapter 66, Article 9, entitled "Collection of Accounts."
Chapter 66, Article 9B, entitled "Motor Clubs and Associations."
Chapter 143, Article 21, entitled "Water and Air Resources," (except Part

Chapter 143, Article 21A, entitled "Oil Pollution Control." Chapter 143, Article 21B, entitled "Air Pollution Control."

Chapter 143, Article 38, entitled "Water Resources." Chapter 143B, Article 7, Part 4, entitled "Environmental Management Commission."

Chapter 131B, entitled "Licensing of Ambulatory Surgical Facilities."

Chapter 84, Article 4, entitled "North Carolina State Bar." Chapter 85C, entitled "Bail Bondsmen and Runners." Chapter 90A, Article 2, entitled "Water Treatment Facility Operators." Chapter 90A, Article 3, entitled "Wastewater Treatment Plant Operators." Chapter 93, entitled "Public Accountants."

Chapter 78A, Article 5, entitled "Registration of Dealers and Salesmen" (of

securities).

Chapter 81A, Article 5, entitled "Public Weightmasters." Chapter 95, Article 15, entitled "Passenger Tramways. Chapter 74, Article 7, entitled "The Mining Act of 1971."

Chapter 113A, Article 4, entitled "Sedimentation Pollution Control Act of 1973.

Chapter 143B, Article 7, Part 8, entitled "Sedimentation Control Commission."

Chapter 143B, Article 7, Part 9, entitled "Wastewater Treatment Plant Operators Certification Commission."

G.S. 76-1 through 76-12, relating to a board of commissioners of navigation and pilotage for the Cape Fear River and Bar.

Chapter 76, Article 6, entitled "Morehead City Navigation and Pilotage Commission.'

The Article in Chapter 90A concerning sanitarians. Chapter 143B, Article 9, Part 15, entitled "North Carolina State Commission on Indian Affairs.

Chapter 93, entitled "Public Accountants." (1977, c. 712, s. 3; 1977, 2nd Sess., c. 1214, s. 2; 1979, c. 744, ss. 1-4; c. 750, s. 2.)

Editor's Note. - The 1977, 2nd Sess., amendment, ratified June 16, 1978, and effective 90 days after ratification, added Chapter 131B to the list of repealed statutes.

Session Laws 1979, c. 744, transferred the following statutes from § 143-34.11 to this

section:

Chapter 78A, Article 5, "Registration of Dealers and Salesmen" (of securities).

Chapter 81A, Article 5, "Public Weightmasters."

Chapter 95, Article 15, "Passenger Tramways."

Chapter 74, Article 7, "The Mining Act of

Chapter 113A, Article 4, "Sedimentation Pollution Control Act of 1973."

Chapter 84, Article 4, "North Carolina State Bar."

Chapter 85C, "Bail Bondsmen and Runners."

Chapter 90A, Article 2, "Water Treatment Facility Operators."

Chapter 90A, Article 3, "Wastewater Treatment Plant Operators."

Chapter 93, "Public Accountants." Chapter 143B, Article 7, Part 8, "Sedimentation Control Commission."

Chapter 143B, Article "Wastewater Trea 7, Part 9,

Treatment Operators Certification Commission."

§§ 76-1 through 76-12, relating to a board of commissioners of navigation and pilotage for the Cape Fear River and

Chapter 76, Article 6, "Morehead City Navigation and Pilotage Commission."

Session Laws 1979, c. 744, also transferred from § 143-34.11 to this section the Article in G.S. Chapter 94A concerning sanitarians (formerly referred to as Chapter 90A, Article 1, "Sanitarians") and Chapter 143B, Article 9, Part 15, "North Carolina State Commission on Indian Affairs" (formerly referred to as Chapter 71, Article 2, "North Carolina Commission on Indian Affairs"). Chapter 744 also transferred from this section to § 143-34.13, Chapter 113A, Article 7, "Coastal Area Management.

Session Laws 1979, c. 750, transferred G.S. Chapter 93, entitled "Public Accountants," to

this section from § 143-34.11.

Session Laws 1979, c. 872, which amended §§ 89A-3 through 89A-6 and deleted Chapter 89A, "Landscape Architects," from the list of statutes repealed by § 143-34.11, provides, in s. 7: "This Chapter is repealed effective July 1, 1981, subject to continuation for one year after that date for a 'winding-up' period pursuant to the provisions of G.S. 143-34.14.

Cited in Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683,

249 S.E.2d 402 (1978).

§ 143-34.13. Certain General Statutes provisions repealed effective July 1, 1983. — The following statutes are repealed effective July 1, 1983, (except for purposes of the winding-up period, as provided by section 5 of this act):

Chapter 90, Article 22, entitled "Licensure Act for Speech and Language Pathologists and Audiologists."
Chapter 89B, entitled "Foresters."
Chapter 85B, entitled "Auctions and Auctioneers."

Chapter 74C, entitled "Private Protective Services Act."

Chapter 89B, entitled "Landscape Contractors."

Chapter 136, Article 2C, entitled "House Movers Licensing Board." Chapter 93D, entitled "North Carolina State Hearing Aid Dealers and Fitters Board.'

Chapter 104E, entitled "North Carolina Radiation Protection Act."

Chapter 106, Article 2, entitled "North Carolina Fertilizer Law of 1947."

Chapter 106, Article 2, entitled "North Carolina Fertilizer Law of 1947." Chapter 106, Article 4C, entitled "Structural Pest Control Act." Chapter 106, Article 5A, entitled "Marketing of Farmers Stock Peanuts." Chapter 106, Article 12, entitled "Food, Drugs and Cosmetics." Chapter 106, Article 14, entitled "State Inspection of Slaughterhouses." Chapter 106, Article 14A, entitled "Licensing and Regulation of Rendering Plants and Rendering Operations.

Chapter 106, Article 15A, entitled "Meat Grading Law."

Chapter 106, Article 17, entitled "Marketing and Branding Farm Products." Chapter 106, Article 28A, entitled "Regulation of Milk Brought into North Carolina from other States," and Article 28B, entitled "Regulation of

Production, Distribution, etc., of Milk and Cream.'

Chapter 106, Article 29, entitled "Inspection, Grading, and Testing Milk and Dairy Products.'

Chapter 106, Article 31, entitled "North Carolina Seed Law."
Chapter 106, Article 34, Part 10, entitled "Feeding Garbage to Swine."
Chapter 106, Article 35, entitled "Public Livestock Markets."

Chapter 106, Article 35B, entitled "Livestock Dealer Licensing Act."

Chapter 106, Article 44, entitled "Unfair Practices by Handlers of Fruits and Vegetables."

Chapter 106, Article 49, entitled "Poultry; Hatcheries; Chick Dealers." Chapter 106, Article 51A, entitled "North Carolina Antifreeze Law of 1975." Chapter 106, Article 53, entitled "Grain Dealers," and Article 54, entitled 'Adulteration of Grains.'

Chapter 113, Article 7, entitled "North Carolina Game Law of 1935." Chapter 113, Article 17, entitled "Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

Chapter 143, Article 52, Part 3, entitled "Pesticide Dealers and Manufacturers.'

Chapter 143, Article 52, Part 4, entitled "Pesticide Applicators and Consultants."

G.S. 58-15, entitled "Authority over all insurance companies; no exemptions from license."

G.S. 58-40, entitled "Agents and others must procure license." Chapter 58, Article 4, entitled "Insurance Premium Financing."

Chapter 113A, Article 7, entitled "Coastal Area Management." (1977, c. 712, s. 4; 1979, c. 744, s. 4.)

Editor's Note. — Session Laws 1979, c. 744, transferred to this section from § 143-34.12, Chapter 113A, Article 7, "Coastal Area Management."

Session Laws 1979, c. 818, s. 2, effective July
1, 1979, substituted Chapter 74C, "Private

Protective Services Act," for Chapter 74B, "Private Protective Services Act," in the list of repealed statutes.

§ 143-34.15. Governmental Evaluation Commission; creation; membership, compensation, etc.; termination. — (a) There is hereby created a temporary State commission, to be known as the Governmental Evaluation Commission, (hereinafter, "the Commission"), which shall consist of 12 members, six to be appointed by the Governor and three each to be appointed by the Lieutenant Governor and the Speaker of the House of Representatives. The Lieutenant Governor's appointees shall be members of the Senate, and the Speaker's appointees shall be members of the House of Representatives, but no other member of the General Assembly or officer or employee of the State or spouse of any such member, officer or employee may be a member of the Commission. Commission members shall designate a chairman from among them annually. The original appointments of nonlegislator members will expire on June 30, 1980. The terms of the nonlegislator members appointed thereafter shall be three years, commencing on July 1 of the year in which the predecessor's term expired. The initial legislator-members shall be appointed after July 1, 1977; they and their successors shall serve until the expiration of the legislative terms which they are serving at the time of their appointment to the Commission and until their successors are appointed or until they cease to be members of the General Assembly, whichever occurs first. Vacancies in the positions of legislator-members shall be filled in the same manner that the vacated position was originally filled, and the person so appointed shall serve for the remainder of the unexpired term of the person whom he succeeds. Vacancies in the positions of the Governor's appointees shall be filled by the Governor for the unexpired term.

(b) Commission members who are not legislators shall receive as compensation for their services the same per diem and travel expense allowances as members of occupational licensing boards pursuant to G.S. 93B-5. Legislator-members of the Commission shall be compensated pursuant to G.S.

120-3.1.

(c) The Commission shall utilize the expertise of the Attorney General and

other appropriate agencies in performing its duties under this act.

(d) The Commission is authorized to employ such clerical, technical and professional staff, and to obtain such consulting services, as the Commission deems necessary, and to defray the expenses thereof from any funds made available to it through grants, appropriations or any other source. The number of staff persons to be employed, the salary to be paid to each, the fees to be paid to consultants, and the expenditure of funds for any purpose by the Commission shall be subject to the approval of the Legislative Services Commission.

(e) Except as herein provided, Commission members shall not be permanent

salaried employees of the Commission.

(f) The Commission shall terminate and the authority granted by this act shall expire on June 30, 1983. (1977, c. 712, s. 6; 1979, c. 744, s. 6.)

substituted "12 members, six to be appointed by first sentence of subsection (a). the Governor, and three" for "10 members, six

Editor's Note. — The 1979 amendment to be appointed by the Governor, and two" in the

§ 143-34.16. Performance evaluation of programs scheduled for termination; changes in scheduled review of statutes; reports to General Assembly. — (a) The Governmental Evaluation Commission shall cause to be conducted a performance evaluation of each program or function scheduled for termination under this Article. The agency responsible for each program or function under review shall provide the Commission with the following information:

(1) The identity of all agencies or subunits under the direct or advisory

control of the agency whose program is under review;
(2) All powers, duties, and functions currently performed by the agency whose program is under review, or that are currently inactive;

(3) All constitutional, statutory, or other authority under which said

powers, duties, and functions of the agency are carried out;
(4) Any powers, duties, or functions which, in the opinion of the agency under review, are being performed and duplicated to any extent by another agency within the State including the manner in which, and the extent to which, this duplication of efforts is occurring and any

recommendations as to eliminating such a situation;
(5) Any powers, duties, or functions which, in the opinion of the agency under review, are inconsistent with current and projected public

demands and should be terminated or altered; and

(6) Any other information which the Commission in its discretion feels is

necessary and proper in carrying out its duties to review.

(b) In conducting the evaluations, the Commission shall take into consideration, but not be limited to considering, the factors listed in G.S. 143-34.17. Upon completion of the evaluation, the Commission shall submit a report to the General Assembly, including the Commission's recommendation as to whether the program or function in question should be terminated, reconstituted, reestablished, or continued, with or without modification of the relevant statutes, and whether the responsible agency should be terminated, reconstituted, reestablished, or continued, with or without modification of the relevant statutes. The Commission shall hold public hearings as provided in G.S. 143-34.18 for the purpose of reviewing its proposed report. A copy of the report shall be made available to each member of the General Assembly at least six months prior to the scheduled date of termination under G.S. 143-34.11 to 143-34.13.

(c) The Commission may review related programs or functions not scheduled for termination which, in the Commission's judgment, should be consolidated or better coordinated with programs scheduled for termination, and as a result of such review the Commission may recommend legislation providing for consolidation or coordination of related programs or for additional related programs to be scheduled for termination.

(d) The Commission may change from one biennium to another the scheduled review of any statute enumerated in G.S. 143-34.11, 143-34.12, or 143-34.13 in order to facilitate the coordinated review of related programs, or to permit an earlier review of any program than is now scheduled pursuant to those sections. The Commission shall report any such schedule change to the ensuing General Assembly and shall recommend that the change be reflected by appropriate amendments to this Article.

(e) The Commission may make such further reports to the General Assembly

as it deems appropriate. (1977, c. 712, s. 7; 1979, c. 744, s. 5.)

Editor's Note. — The 1979 amendment added subsections (d) and (e).

Cited in Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 143-34.17. Evaluation elements.

Cited in Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683. 249 S.E.2d 402 (1978).

§ 143-34.18. Hearings by Governmental Evaluation Commission; final action by Commission.

Cited in Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 143-34.19. Hearings and recommendations by legislative committees of reference.

(b) In developing their legislative recommendations, the committees of reference shall proceed with a view to continuing productive, efficient and active programs which are in the public interest, to eliminating inactive programs, and to eliminating or consolidating overlapping or duplicating programs; and shall consider the extent to which changes are needed in enabling laws. (1977, c. 712, s. 10; 1979, c. 744, s. 7.)

deleted "shall consider the evaluation elements" amendment it is not set out. listed in G.S. 143-34.17;" following "committees of reference" near the beginning of subsection

Editor's Note. - The 1979 amendment As subsection (a) was not changed by the

ARTICLE 2B.

Notice of Appointments to Public Offices.

§ 143-47.6. Definitions. — As used in this Article, unless the context clearly requires otherwise:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other person

Governors of The University of North Carolina, and any other person or group authorized by law to appoint to a public office.

(2) "Public office" means appointive membership on any State commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges and technical institutes created pursuant to G.S. 115A-7, and any other State agency created by law, where the appointee is entitled to draw subsistence, per diem compensation, or travel allowances, in whole or in part from funds deposited with the State Treasurer or any other funds subject to being audited by the State

Auditor, by reason of his service in the public office; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions. (1979, c. 477, s. 1.)

Editor's Note. - Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

§ 143-47.7. Notice and record of appointment required. — (a) Within 60 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of such appointment with the Governor, Secretary of State, the State Legislative Library, the State Library and the State Disbursing Officer. For the purposes of this section, a copy of the letter from the appointing authority or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if such copy contains

the information required in subsection (b) of this section.

(b) The notice required by this Article shall state the name and office of the appointing authority, the public office to which the appointment is made, the name and address of the appointee, a citation of the law pursuant to which the appointment is made, the date of the appointment, and the term of the appointment. (1979, c. 477, s. 1.)

Editor's Note. — Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

§ 143-47.8. Notice of existing appointments. — Within 60 days after the effective date of this Article, every appointing authority shall file notices of all existing appointments to public offices in accordance with G.S. 143-47.7. (1979, c. 477, s. 1.)

Editor's Note. — Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

§ 143-47.9. Subsistence, per diem compensation, and travel allowances conditioned on filing of notice. — No person who has been appointed to any public office and has accepted that appointment shall be entitled to receive subsistence, per diem compensation, or travel allowances unless and until compliance is made with the provisions of G.S. 143-47.7. (1979, c. 477, s. 1.)

Editor's Note. - Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

ARTICLE 3.

Purchases and Contracts.

§ 143-49. Powers and duties of Secretary. — The Secretary of Administration shall have power and authority, and it shall be his duty, subject

to the provisions of this Article:

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human Resources, and to counties, cities, towns, governmental entities and other subdivisions of the State

and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Advisory Budget Commission may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1.)

Editor's Note. -

The 1979 amendment, effective July 1, 1979, inserted "to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human

Resources" near the beginning of the first sentence of subdivision (6).

As the rest of the section was not changed by the amendment only the introductory language and subdivision (6) are set out.

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included.

Editor's Note. — For a survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

§ 143-126.1. Lien on patient's property for unpaid balance due institution. (g) Notwithstanding the foregoing provisions, no such lien shall be enforceable against any funds paid by the State to a patient after judgment or settlement of a claim for damages arising out of the negligent injury of such patient at any of the State institutions listed in G.S. 143-117 during the life of such patient. Upon the death of the patient, any remaining proceeds of a judgment or settlement under this subsection in the hands of the deceased patient shall become a general asset of the estate and subject to any lien of the State. (1967, c. 959; 1973, c. 476, s. 133; 1979, c. 978, s. 1.)

Editor's Note. — The 1979 amendment added subsection (g).

Session Laws 1979, c. 978, s. 2, provides: "This act shall become effective upon ratification [June 8, 1979] and shall apply to claims which

have not been paid by the State on the effective date."

As the rest of the section was not changed the amendment, only subsection (g) is set out.

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities. — (a) Notwithstanding the foregoing provisions of G.S. 143-117 through 143-127 inclusive, the natural or adoptive parents of persons who are non-Medicaid, long-term patients at facilities owned or operated by the Department of Human Resources shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the Department of Human Resources.

(b) Parents or adoptive parents of a patient in a facility owned or operated by the Department of Human Resources shall not be liable for any charges made by such facility for treatment, care and maintenance of such a patient incurred

or accrued subsequent to such patient attaining age 18.

(c) For purposes of this section, the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the Department of Human Resources for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status

of a long-term patient.

(d) Notwithstanding any other provisions of the law, the income and financial resources of the natural or adoptive parents of persons under the age of 21 who since July 1, 1978, had spent a total of at least 180 days as long-term patients in public or private certified intermediate care or skilled nursing facilities, shall not be taken into account in the determination of whether that child is eligible for medical assistance under Article 2, Part 5 of Chapter 108 of the General Statutes and Title XIX of the Social Security Act. (1971, c. 218, s. 1; 1973, c. 476, s. 133; c. 775; 1975, c. 19, s. 48; 1979, c. 838, ss. 25-27.

Editor's Note. -

The 1979 amendment inserted "non-Medicaid" near the beginning of subsection (a), deleted "long-term" after "parents of a" near the beginning of subsection (b), and added subsection (d). Subsection (d) is made effective upon "receipt by the Department of Human Resources of official notification from the Secretary of Health, Education and Welfare that institutionalized, minor, disabled children may be considered as financially independent for purposes of Medicaid eligibility." Such notification has been received.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

ARTICLE 8.

Public Building Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors.

Cross Reference. —
As to application of this Article to lease of personal property with an option to purchase by a county, see § 160A-19.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc. - No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than thirty thousand dollars (\$30,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars (\$2,500), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having

general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award

or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in

the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such

claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal

Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this

section or to the provisions of any other section of this Article.

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1.)

Local Modification. — Wake: 1979, c. 262; thousand dollars (\$30,000)" for "ten thousand 1979, c. 291.

Editor's Note. -

The 1979 amendment substituted "thirty

City of Charlotte: 1979, c. 352; City of Jacksonville: dollars (\$10,000)" in the first sentence of the first paragraph.

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. — Wake: 1979, c. 262.

§ 143-132. Minimum number of bids for public contracts. — No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2.)

Editor's Note. -

contracts requiring expenditure of between The 1979 amendment deleted the former \$10,000 and \$30,000 upon receipt of two second paragraph, which authorized awarding competitive bids in certain circumstances.

§ 143-134.1. Interest on final payments due to prime contractors. — On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328; 1967, c. 860; 1979, c. 778.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "except contracts let by the Department of Transportation pursuant to G.S. 136-28.1" for "except the construction of roads, highways, bridges and their approaches" near the middle of the first sentence, substituted "one percent (1%) per month or fraction thereof unless a lower rate

is agreed upon" for "six percent (6%) per annum" near the end of the fourth sentence, and added the fifth and sixth sentences.

Session Laws 1979, c. 778, s. 2, provides: "This act shall become effective July 1, 1979, and shall apply to all public construction contracts described herein which are awarded after July 1, 1979"

ARTICLE 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership. — (a) Creation; Membership; Terms. — There is hereby created a Building Code Council, which shall be composed of 12 members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered architect or licensed general contractor specializing in residential design or construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, a registered engineer on the engineering staff of a State agency charged with approval of plans of state-owned buildings, and an active member of the North Carolina fire service with expertise in fire safety. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required

above.

(b) Compensation. — Members of the Building Code Council other than any who are employees of the State shall receive seven dollars (\$7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council. (1957, c. 1138; 1965, c. 1145; 1969, c. 1229, s. 1; 1971, c. 323; 1979, c. 863.)

Editor's Note. - The 1979 amendment substituted "12" for "11" near the beginning of the first sentence in subsection (a), deleted "and" after "electrical contractor" near the end of that sentence, and added "and an active member of the North Carolina fire service with

expertise in fire safety" at the end of the sentence.

Cited in Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910 (1979).

§ 143-138. North Carolina State Building Code.

History. —

In accord with original. See Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910 (1979).

Does Not Authorize Subsection (b) Amendment of Building Code so as to Impose More Stringent Requirements on Buildings Meeting Prior Requirements Where Use Is Not Altered. — There is in subsection (b) of this section no clearly expressed grant of power

from the legislature to the Building Code

Council to amend the State Building Code so as to impose new and more stringent requirements upon existing buildings which, prior to such amendment, fully complied with the Code and which are neither being altered or changed in use. Further, there is nothing in the wording of the statute evidencing a legislative intent that the grant of such a drastic power should be implied. Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910 (1979).

§ 143-139. Enforcement of Building Code.

Stated in Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910 (1979).

ARTICLE 9A.

Uniform Standards Code for Mobile Homes.

§ 143-144. Short title.

For comment on the status of mobile homes as Rev. 612 (1972). residences or vehicles and their regulation in

Editor's Note. — North Carolina municipalities, see 50 N.C.L.

§ 143-146. Statement of policy; rule-making power.

(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of mobile homes set by the Department of Housing and Urban Development under the provisions of the National Mobile Home Construction and Safety Standards Act of 1974, as these standards may be amended.

(e) The Commissioner is authorized to promulgate such rules as are necessary to carry out the provisions of this Article and such rules as are necessary to enable the State of North Carolina to assume responsibility for the enforcement of the Mobile Home Construction and Safety Standards Act of 1974. (1969, c. 961,

s. 3; 1971, c. 1172, s. 2; 1979, c. 558, ss. 5, 6.)

Editor's Note. - The 1979 amendment, effective Oct. 1, 1979, rewrote subsection (b), and added subsection (e).

Session Laws 1979, c. 558, s. 7, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsections (b) and (e) are set out.

§ 143-148. Certain structures excluded from coverage. — The Commissioner shall exclude from coverage of this Article any structure which the manufacturer certifies to be excluded under G.S. 143-145(7). (1969, c. 961, s. 5; 1971, c. 1172, s. 4; 1979, c. 558, s. 3.)

Editor's Note. — The 1979 amendment, Session Laws 1979, c. 558, s. 7, contains a effective Oct. 1, 1979, rewrote the section.

§ 143-151. Penalties. — (a) Whoever violates (i) the provisions of this Article; or (ii) any rules promulgated under this Article, shall be liable for civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each such violation shall constitute a separate violation with respect to each mobile home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from the date of the first violation.

(b) Any individual, corporation, or a director, officer or agent of a corporation who knowingly and willfully violates this Article or any rules promulgated under this Article in a manner which threatens the health or safety of any purchaser is guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both. (1971,

c. 1172, s. 7; 1979, c. 558, s. 1.)

Editor's Note. — The 1979 amendment, Session Laws 1979, c. 558, s. 7, contains a effective Oct. 1, 1979, rewrote the section.

§ 143-151.1. Enforcement. — The Commissioner of Insurance or any inspection department may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties pursuant to this Article, or the National Mobile Home Construction and Safety Standards Act of 1974, is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in the State of North Carolina in which mobile homes are manufactured. (1971, c. 1172, s. 8; 1979, c. 558, s. 2.)

Editor's Note. — The 1979 amendment, Session Laws 1979, c. 558, s. 7, contains a effective Oct. 1, 1979, added the second severability clause. sentence.

§ 143-151.2. Fees. — (a) The Commissioner may establish a monitoring inspection fee in an amount established by the Secretary of Housing and Urban Development. This monitoring inspection fee shall be an amount paid by each mobile home manufacturer in the State for each mobile home produced by the

manufacturer in that state.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of Housing and Urban Development or such Secretary's agent, who shall distribute the fees collected from all mobile home manufacturers among the approved and conditionally-approved states based on the number of mobile homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Mobile Home Construction and Safety Standards Act of 1974. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.3. Reports. — Each manufacturer, distributor, and dealer of mobile homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of Housing and Urban Development may reasonably require to be able to determine whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the National Mobile Home Construction and Safety Standards Act of 1974 and shall, upon request of a person duly designated by the Commissioner or the Secretary of Housing and Urban Development, permit such person to inspect appropriate books, papers, records and documents relevant to determining whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this Article or the National Mobile Home Construction and Safety Standards Act of 1974. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.4. Notification of defects. — Every manufacturer of mobile homes shall furnish notification of any defect in any mobile home produced by such manufacturer in accordance with procedures specified by the Commissioner. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.5. Prohibited acts. — (a) No person shall:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any mobile home which is manufactured on or after the effective date of any applicable mobile home construction and safety standard under this Article and which does not comply with such standard, except as provided in subsection

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or

inspection, as required under this Article;

(3) Fail to furnish notification of any defect as required by G.S. 143-151.4; (4) Fail to issue a certificate of compliance, or issue a certification to the effect that a mobile home conforms to all applicable mobile home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(5) Fail to comply with a rule issued by the Commissioner under this Article;

(6) Issue a certification pursuant to G.S. 143-148(c) if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

(b) (1) Paragraph (1) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery of any mobile home after the first

purchase of it in good faith for purposes other than resale.
(2) Paragraph (1) of subsection (a) shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such mobile home was not in conformity with applicable mobile home construction and safety standards, or to any person who,

prior to such first purchase, holds a certificate of compliance issued by the manufacturer or importer of such mobile home to the effect that such mobile home conforms to all applicable mobile home construction and safety standards, unless such person knows that such mobile home does not so conform. (1979, c. 558, s. 4.)

7, contains a severability clause.

Editor's Note. — Session Laws 1979, c. 558, s. Section 143-148(c), referred to in this section, does not exist.

ARTICLE 9B.

North Carolina Code Officials Qualification Board.

§ 143-151.13. Required standards and certificates for Code-enforcement officials. — (a) The Board shall provide by regulation that on and after July 1, 1979, no person may engage in Code enforcement pursuant to this Article unless he possesses one of the following types of certificates, currently valid, issued by the Board attesting to his qualifications to hold such position: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c); or (iii) a probationary certificate provided for in subsection (d). To obtain a standard certificate, a person must pass an examination, as prescribed by the Board, which is based on the North Carolina State Building Code and administrative procedures required to enforce the Code. The Board shall issue a standard certificate of qualification to each person who successfully completes the examination authorizing the person named therein to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population — July 1, 1979 Counties and Municipalities between 50,001 and 75,000 — July 1, 1981 Counties and Municipalities between 25,001 and 50,000 — July 1, 1983

Counties and Municipalities 25,000 and under — July 1, 1985.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board's regulations to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have his probationary or temporary certificate extended beyond the specified period by renewal or otherwise. The Board may by regulation provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health. (1979, cc. 521, 829.)

Editor's Note. — The first 1979 amendment substituted the language beginning "he held on the applicable date" at the end of the third sentence of the first paragraph of subsection (c) for "held on June 13, 1977."

The second 1979 amendment deleted "valid for one year only" after "probationary certificate" near the end of the first sentence of subsection (a), substituted "such period (not less than one year nor more than three years) as specified by the Board's regulations" for "one year" near the beginning of the first sentence of subsection (d). and substituted "the specified period" for "one year" near the end of the second sentence of subsection (d).

As only subsections (a), (c), and (d) were changed by the amendments, the rest of the

section is not set out.

ARTICLE 9C.

Enforcement of Building Code Insulation and Energy Utilization Standards.

§ 143-151.26. Purpose and intent.

Editor's Note. -Session Laws 1979, c. 522, s. 1, repeals Session Laws 1977, c. 703, s. 12, which provided that this

Article should remain in effect until July 1, 1979. and Session Laws 1979, c. 522, s. 2, reenacts this Article.

§ 143-151.27. Designation of local inspectors. — The superintendent of each county, city, or joint inspection department (created under the provisions of Chapter 153A, Article 18, Part 4, or Chapter 160A, Article 19, Part 5, or Chapter 160A, Article 20, Part 1, or by local or special act of the General Assembly) may designate the person or persons in that department responsible for enforcement of the insulation and energy utilization standards of the State Building Code and send their names and addresses to the Engineering and Building Codes Division of the North Carolina Department of Insurance; provided, nothing herein shall be construed to require the hiring of additional inspection personnel in any county, city, or joint inspection department. In every county or city which does not have an inspection department, the governing board may designate one or more "energy and insulation inspectors" and make such notification to the Department of Insurance; the territorial jurisdiction of such inspectors shall be the jurisdiction of the appointing unit, as specified in G.S. 160A-360, and they shall possess all applicable enforcement powers of a county or city inspection department. (1977, c. 703, s. 2; 1979, c. 522, s. 3.)

Editor's Note. — The 1979 amendment deleted "Prior to September 1, 1977" at the beginning of the first sentence, substituted "may" for "shall" near the middle of the first beginning of the second sentence.

§ 143-151.28. Training course for inspectors. — The Engineering and Building Codes Division of the Department of Insurance shall make available to the personnel designated pursuant to G.S. 143-151.27 a course or courses of instruction covering the insulation and energy utilization requirements of the State Building Code for dwellings or other structures which are not required by law to be designed by a registered architect or professional engineer. (1977, c. 703, s. 3; 1979, c. 522, s. 4.)

Editor's Note. — The 1979 amendment periodically thereafter" at the beginning of the deleted "Prior to January 1, 1978, and section.

§ 143-151.29. Permits. — The governing body of a city or county may provide that no person, firm, or corporation may for a consideration install, alter, or restore any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards without first securing a permit either from the inspection department with jurisdiction over the work site, or in the absence of such a department, from an energy and insulation inspector with appropriate jurisdiction. Such permit may be either (i) a general building permit evidencing full compliance with all applicable requirements of the State Building Code and other State and local laws, issued by an inspection department, or (ii) a special permit issued by an energy and insulation inspector evidencing compliance with the insulation and energy utilization standards of the State Building Code. (1977, c. 703, s. 4; 1979, c. 522, s. 5.)

Editor's Note. — The 1979 amendment deleted "On and after January 1, 1978" at the beginning of the first sentence.

ARTICLE 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law-Enforcement Officers' Benefit and Retirement Fund. (b) For the purpose of determining the recipients of benefits under this article

and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund." The membership of the Board of Commissioners shall consist of 10 members, as follows:

(1) The State Treasurer, who shall be chairman ex officio;(2) The State Auditor, who shall be a member ex officio;

(3) The State Insurance Commissioner, who shall be a member ex officio;

(4) Five members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one a law enforcement officer employed by the State, one a retired law enforcement officer in receipt of an allowance from the Retirement

Fund, and one representing the public at large;
(5) Two members, one a member of the House of Representatives to be appointed by the Speaker of the House and one a member of the Senate to be appointed by the President of the Senate, neither of whom shall be an active or retired law enforcement officer, to serve terms beginning July 1, 1979, for the duration of their current terms of office with their successors thereafter appointed for two-year terms to run concurrently with the organization of the General Assembly.

(c) Repealed by Session Laws 1979, c. 976, s. 2, effective July 1, 1979.

(g) The Board of Commissioners of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold the same for the uses of said fund in accordance with the purposes of this Article. The State Treasurer shall be the custodian of the fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this Article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this Article, he shall contribute into the fund herein created six percent (6%) of his compensation received for each pay period beginning on or after July 1, 1977. Such rate shall apply uniformly to all members of the Law-Enforcement Officers' Benefit and Retirement Fund, without regard to their coverage under the Social Security Act. The mode of payment to the fund shall be determined by the Board of Commissioners. Provided, that any officer so contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law-enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the fund for credit to the individual account of such member any one

or more of the following:

(1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year fifteen percent (15%) of such member's compensation; and

(2) A sum not to exceed three times the value of prior service of such

member as determined by the Board of Commissioners; and

(3) A sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law-enforcement officer, a five percent (5%) contribution and a sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been

compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund or Wildlife Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law-enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law-enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law-enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by Chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law-Enforcement Officers' Benefit and Retirement Fund.

On or before June 15th of each year, the Board of Commissioners shall establish for the next fiscal year a uniform annual employer's contribution rate necessary to financially support the basic benefit allowances provided for all members of the Law-Enforcement Officers' Benefit and Retirement Fund. Such employers' contributions shall apply to all employers of in-service members of the Law-Enforcement Officers' Benefit and Retirement Fund. The employer's annual contribution rate shall be equal to a percentage of the actual compensation paid to each member employed which will fund the basic benefit allowances in the fund, exclusive of any supplemental benefit allowances that may be provided on an optional basis. The State of North Carolina, each county, city, town or other subdivision of government employing active members of the Law-Enforcement Officers' Benefit and Retirement Fund within the State of North Carolina shall pay monthly into the fund an amount equal to the annual contribution rate multiplied by the total monthly compensation of those participating members employed. The Board of Commissioners shall establish the necessary and reasonable rules and regulations for the administration of this section, including the manner in which payments of the required employer

contribution rates will be made. (j) Any member who is no longer a law enforcement officer, who has 15 or more years of creditable service, who leaves his total accumulated contributions in the Retirement Fund, and who is 50 years of age or older, may apply for and receive a deferred retirement allowance. Any member who is no longer a law-enforcement officer, who has five or more years of creditable service, who leaves his total accumulated contributions in the Retirement Fund, and who is 55 years of age or older, may apply for and receive a deferred retirement allowance. The deferred retirement allowance shall be computed in the same manner as is the basic service retirement allowance set forth in G.S. 143-166(y).

(x) Notwithstanding any of the foregoing provisions, the benefits to each beneficiary on the retirement rolls as of June 30, 1977, shall be increased by five percent (5%) of the benefits being received by each such beneficiary as of June

30, 1977.

(x1) As of December 31 of each year, the Board of Commissioners shall determine the ratio of the Consumer Price Index to that index of the previous year. Each beneficiary receiving a basic service retirement allowance, a basic disability retirement allowance, or an alternative to those allowances as of July 1 of the year of determination shall be entitled to have his total allowance increased effective July 1 of the year following the year of determination by the same percentage increase by the ratio calculated to the nearest tenth of one percent (½ 10 of 1%); provided, however, that increase:

(1) Shall not exceed four percent (4%) in any year; and

(2) Shall be limited to the annual actuarial gain of the Retirement Fund. For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average) as published by

the United States Department of Labor, Bureau of Labor Statistics.

(x2) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(y) Any member in service may retire on a basic service retirement allowance who: has attained 50 years of age and has completed 15 or more years of creditable service; or has completed 30 or more years of creditable service; or

has attained 55 years of age.

Under such rules and regulations as are otherwise adopted by the Board of Commissioners, a member eligible to retire under this subsection shall receive a basic service retirement allowance equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation (calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average), multiplied by the number of years of his creditable service, and reduced by one-third of one percent ($^{1}/_{3}$ of 1%) for each month by which his date of retirement precedes his 55th birthday, except that no reduction in the basic service retirement allowance shall apply to any member who has 30 or more years of creditable service at the

Any member who is less than 55 years of age with five or more years of creditable service and who has been totally and permanently incapacitated for duty, or any member who is less than 55 years of age with one or more years of membership service and who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place may, upon application of the member or his employer, be retired by the Board of Commissioners on a basic disability retirement allowance as is set forth below. The Board of Commissioners shall not grant a basic disability retirement allowance to any member for whom application for disability retirement is received more than a year after the onset of incapacity for duty or, if the member is in receipt of compensation from his employer on account of such incapacity for duty for more than one year, more than 30 days after the cessation of that compensation.

Under such rules and regulations as are otherwise adopted by the Board of Commissioners, a member eligible for a basic disability retirement allowance shall receive a disability retirement equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average, multiplied by the number of years of creditable service which he would have had if he had

continued in service until his 55th birthday.

The Board of Commissioners shall implement the provisions of this subsection

by the adoption of necessary and reasonable rules and regulations.

(z) Death Benefit Plan. — There is created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement Fund and under which the members of the Retirement Fund shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Commissioners in their capacity as trustees under the Group Life Insurance Plan, of the death in service of a member who had completed at least one full calendar year of membership in the Retirement Fund, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Commissioners, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs;

or

(2) The compensation on which contributions were made by the member during the 12-month period ending on the last day of the month

preceding the month in which his death occurs; or

(3) If the member had applied for and was entitled to receive a disability retirement allowance under the fund and such disability retirement allowance had not been discontinued or revoked within 366 days of his last date of actual service, the compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his last day of actual service occurred,

subject to a maximum of twenty thousand dollars (\$20,000), less any death benefit paid from the Separate Benefit Fund. Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the fund on his death. For the purposes of this plan, a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death or if his last day of actual service occurred not more than 366 days before the date of his death if such member during said one-year period had applied for and was entitled to receive a disability retirement allowance under the fund, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

The Board of Commissioners shall provide the death benefit either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Commissioners and all investment earnings on the trust fund

shall be credited to such fund.

(4) In administration of the death benefit contained in this subsection, the

following shall apply:

a. For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

b. Last day of actual service shall be:

1. When employment has been terminated, the last day the member actually worked;

2. When employment has not been terminated, the date on which an absent member's sick and annual leave expired.

- c. A member on leave of absence from his position as a law enforcement officer for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a law enforcement officer during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars (\$20,000), less any death benefit paid from the Separate Benefit Fund.
- (5) The provisions of the Retirement Fund pertaining to administration, G.S. 143-166(a) through (f), and management of funds, G.S. 143-166(g), are hereby made applicable to the Plan. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953; 1965, c. 351, ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235; 1973, c. 931; 1977, c. 783, s. 4; c. 1090; 1977, 2nd Sess., c. 1204, s. 3; 1979, c. 467, s. 19; c. 838, ss. 97, 100-102, 105; c. 976, ss. 1, 2.)

Editor's Note. -

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted, in the first sentence of subsection (b), "shall consist of the State Treasurer, who shall be chairman ex officio of said Board, the State Auditor" for "shall consist of the State Auditor, who shall be chairman ex officio of said Board, the State Treasurer."

The first 1979 amendment substituted the present provisions of subsection (g) for former subsection (g) which gave the Board of Commissioners the power to invest and reinvest funds in certain listed obligations and securities.

The second 1979 amendment, effective July 1, 1979, added the last paragraph to subsection (i), rewrote subsections (j) and (y), and added subsections (x1), (x2), and (z).

The third 1979 amendment, effective July 1, 1979, rewrote the former first sentence of

subsection (b) as the present first and second sentences, substituted "article" for "section" near the beginning of the present first sentence of subsection (b), and deleted the former second, third and fourth sentences of subsection (b), which dealt with compensation for the members of the Board and specified the number required for a quorum. The third amendment also repealed subsection (c), which provided for the organization of the Board and the selection of employees and prohibited political activity by employees.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

As the rest of the section was not changed by the amendments, it is not set out.

**S 143-166.01. Transfer of membership from local governmental employees' retirement system to law enforcement officers' benefit and retirement fund.

— (a) Any employer, as the term is defined in G.S. 128-21(11), participating in the North Carolina Local Governmental Employees' Retirement System may, until June 30, 1981, allow law enforcement officers, as the term is defined in G.S. 143-166(m), employed by such employer who are members of the North Carolina Local Governmental Employees' Retirement System to transfer membership from said Retirement System and become members of the Law Enforcement Officers' Benefit and Retirement Fund; Provided, that any employer allowing law enforcement officers to transfer shall pay a lump sum amount to the Law Enforcement Officers' Benefit and Retirement Fund equal to the difference between the full cost, as defined in Section 5 of this section, and the officers' and employer contributions transferred by virtue of subsection (b) of this act.

Governmental Employees' Retirement System stating that he desires to transfer his membership in the Local Governmental Employees' Retirement System and become a member of the Law Enforcement Officers' Benefit and Retirement, and upon the lump sum payment by the employer of the full cost, as defined in subsection (e), the Local Governmental Employees' Retirement System is hereby authorized, empowered, and directed to transfer to the Law Enforcement Officers' Benefit and Retirement Fund:

(1) All of the officer's accumulated contributions that were made on compensation received as a law enforcement officer, together with the accumulated regular interest thereon, standing to the credit of such employee in the Local Governmental Employees' Retirement System;

and

(2) An amount equal to the normal and accrued liability payments that were made because of service rendered as a law enforcement officer which have been made to the Local Governmental Employees' Retirement System by reason of such service to the employer calculated as the result of multiplying the normal and accrued liability percentage in effect at the time of the transfer times the compensation paid for service rendered as a law enforcement officer.

Upon such transfer being made, the officer shall immediately become a member of the Law Enforcement Officers' Benefit and Retirement Fund and the service transferred shall no longer be creditable in the Local Governmental

Employees' Retirement System.

(c) The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund is hereby authorized, empowered, and directed to receive any funds transferred as provided in this act as follows:

(1) Upon receipt of a transferring officer's contributions, such contributions shall be deposited in the officer's regular contributions account; and

(2) Upon receipt of the amount equal to the normal and accrued liability payments that were made by the employer because of service rendered as a law enforcement officer from the Local Governmental Employees' Retirement System and the additional amount required to fund the full cost of benefits as determined in subsection (e) of this act, such funds shall be deposited in the Accumulation Account.

(d) The creditable service of an officer who transfers to the Law Enforcement Officers' Benefit and Retirement Fund shall be the service that was creditable as a law enforcement officer in the Local Governmental Employees' Retirement

System.

(e) The term "full cost" as used in this act shall be calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account such transferred service credits providing for a retirement allowance at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Commissioners upon advice of the consulting actuary.

(f) The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund is authorized and empowered to make and promulgate suitable rules and regulations to carry out the provisions of this act. (1979, c.

1058, ss. 1-6.)

Editor's Note. — Session Laws 1979, c. 1058, s. 7, makes this section effective July 1, 1979.

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.2. Definitions.

- (c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.
- (d) The term "law-enforcement officer," "officer," or "fireman" shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the Division of Youth Services of the Department of Human Resources. The term "fireman" shall mean "eligible fireman" or "fireman" as defined in G.S. 118-23. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Auditor on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Human Resources pursuant to Article 26 of Chapter 130 of the General Statutes. The Department of Human Resources shall furnish a list of ambulance service members to the State Auditor on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a).

(1979, c. 516, ss. 2, 3; c. 869.)

Editor's Note. -

The first 1979 amendment deleted "or senior member of the Civil Air Patrol" following "rescue squad worker" near the beginning of the first sentence of subsection (c), and added the second sentence of subsection (c). The amendment also rewrote the last sentence of subsection (d), which formerly read "The term 'Civil Air Patrol members' shall mean those senior members, 18 years of age and older, who are in good standing, currently trained and so

certified by the Secretary of Crime Control and Public Safety or his delegate."

The second 1979 amendment, effective retroactively from and after July 1, 1975, added "and all full-time institutional and detention employees of the Division of Youth Services of the Department of Human Resources" at the end of the first sentence of subsection (d).

As the rest of the section was not changed by the amendments, only subsections (c) and (d) are

§ 143-166.5. Other benefits not affected. — None of the other benefits now provided for law-enforcement officers, or other persons covered by this Article, or their dependents by the Workers' Compensation Act or other laws shall be affected by the provisions of this Article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1; 1965, c. 937; 1979, c. 245; c. 714, s. 2.)

Editor's Note. — The first 1979 amendment The second 1979 amendment, effective July 1. inserted "or other persons covered by this 1979, substituted "Workers' " for "Workmen's." Article" near the beginning of the section.

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-213. Definitions. — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(27) The term "Federal Clean Air Act" refers to the Clean Air Act, 42 U.S.C.

7401 et seq. (28) The term "nonattainment area" refers to an area which is shown to

exceed any national ambient air quality standard for such pollutant. (29) The term "prevention of significant deterioration" refers to the statutory and regulatory requirements arising from the Federal Clean Air Act designed to prevent the significant deterioration of air quality in areas with air quality better than required by the national ambient

air quality standards.

(30) The term "waste treatment management practice" means any method, measure or practice to control plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage which are associated with, or ancillary to the industrial manufacturing or treatment process of the class or category of point sources to which the management practice is applied. Waste treatment management practices may only be imposed, supplemental to effluent limitations, for a class or category of point sources, for any specific pollutant which has been designated as toxic or hazardous pursuant to sections 307(a)(1) or 311 of the Federal Water Pollution Control Act. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 4; 1973, c. 821, ss. 1-3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 545, ss. 8-10; c. 633, s. 1.)

Editor's Note. 1979, added subdivision (27), (28) and (29). The second 1979 amendment, effective July 1,

Only the introductory language and the The first 1979 amendment, effective July 1, subdivisions changed by the amendments are set out.

1979, added subdivision (30).

§ 143-214.1. Water; water quality standards and classifications; duties of **Environmental Management Commission.**

(d) Criteria for Assignment of Classifications. - In assigning to each

identified water the appropriate classifications (with its accompanying standards), the Environmental Management Commission shall consider, and the decision of the Environmental Management Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow,

stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason

of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and should take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement:

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(1979, c. 633, s. 6.)

Editor's Note. -1972" after "Control Act" near the middle of subdivision (4) of subsection (d).

As the rest of the section was not changed by The 1979 amendment deleted "amendments of the amendment, only subsection (d) is set out.

§ 143-214.3. Revision to water quality standard. — (a) Any person subject to the provisions of G.S. 143-215.1 may petition the Environmental Management Commission for a hearing pursuant to G.S. 143-215.4 for a revision to water quality standards adopted pursuant to G.S. 143-214.1 as such water quality standards may apply to a specific stream segment into which the petitioner discharges or proposes to discharge.

(b) Upon a finding by the Environmental Management Commission that: (1) Natural background conditions in the stream segment preclude the attainment of the applicable water quality standards; or

(2) Irretrievable and uncontrollable man-induced conditions preclude the

attainment of the applicable water quality standards; or
(3) Application of effluent limitations for existing sources established or proposed pursuant to G.S. 143-215.1 more restrictive than those effluent standards and limitations determined or promulgated by the United States Environmental Protection Agency pursuant to section 301 of the Federal Water Pollution Control Act in order to achieve and maintain applicable water quality standards would result in adverse social and economic impact, disproportionate to the benefits to the public health, safety or welfare as a result of maintaining the standards; and 48

(4) There exists no reasonable relationship between the cost to the petitioner of achieving the effluent limitations necessary to comply with applicable water quality standards to the benefits, including the incremental benefits to the receiving waters, to be obtained from the

application of the said effluent limitations;

Then the Environmental Management Commission shall revise the standard or standards, as such standard may apply to the petitioner, provided that such revised standards shall be no less stringent than that which can be achieved by the application of the highest level of treatment which will result in benefits, including the incremental benefits to the receiving waters, having a reasonable relationship to the cost to the petitioner to apply such treatment, as determined by the evidence; provided, however, in no event shall these standards be less stringent than the level attainable with the application by the petitioner of those effluent standards and limitations determined or promulgated by the United States Environmental Protection Agency pursuant to section 301 of the Federal Water Pollution Agency pursuant to section 301 of the Federal Water Pollution Control Act; provided, further, that no revision shall be granted which would endanger human health or safety. (1979, c. 929.)

Editor's Note. — Session Laws 1979, c. 929, s. 3, makes this section effective July 1, 1979.

§ 143-215. Effluent standards and limitations. — (a) The Environmental Management Commission is authorized and directed to develop, adopt, modify and revoke effluent standards and limitations and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations or management practices may provide, without limitation, standards or limitations or management practices for any point source or sources; standards, limitations, management practices, or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations or management practices.

(b) The effluent standards and limitations developed and adopted by the Environmental Management Commission shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters. The management practices developed and adopted by the Environmental Management Commission shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and shall prescribe practices necessary to be employed in order

to prevent or reduce contribution of pollutants to the State's waters.

(c) In adopting effluent standards and limitations and management practices the Environmental Management Commission shall be guided by the same considerations and criteria set forth, from time to time, in federal law for the guidance of federal agencies administering the Federal Water Pollution Control Program. It is the intent of the General Assembly that the effluent standards and limitations and management practices adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards and limitations and management practices. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23; 1975, c. 583, s. 1; 1979, c. 633, ss. 2-4.)

Editor's Note. -

first sentence, inserted "or management The 1979 amendment, effective July 1, 1979, in practices" in two places near the beginning of subsection (a), inserted "and waste treatment" the second sentence, inserted "management management practices" near the middle of the practices" near the middle of the second

sentence, and added "or management practices" at the end of that sentence. In subsection (b) the amendment added the second sentence; and in subsection (c) it inserted "and management

practices" near the beginning of the first sentence and near the middle of the second sentence, and added those words at the end of the second sentence.

§ 143-215.1. Control of sources of water pollution; permits required. — (a) No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Make any outlets into the waters of the State;

(2) Construct or operate any sewer system, treatment works, or disposal system within the State;

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water;

(5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards

applicable to such waters;

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Environmental Management Commission under the provisions of this Article;

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such

facility

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities;

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable

freshwater, estuarine, or marine plants or animals.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Environmental Management Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste into waters classified as sources of public water supply, where the Department of Human Resources determines and advises the Environmental Management Commission that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect thereon, until the Environmental Management Commission has referred the complete plans and specifications to the Commission for Health Services and has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161.

In any case where the Environmental Management Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Environmental Management Commission's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the

applicant may obtain a permit.

(1979, c. 633, s. 5.)

Editor's Note. — As the rest of the section was not changed by The 1979 amendment, effective July 1, 1979, added subdivisions (9) and (10) of subsection (a).

§ 143-215.2. Special orders. — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing. Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry. (1979, c. 889.)

Editor's Note. — As the rest of the section was not changed by The 1979 amendment added the last sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; auxiliary powers. — (a) In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of Articles 21, 21A and 21B and rules of procedure establishing and amplifying the procedures to be followed in the administration of these Articles, including rules and regulations providing for the charge of a reasonable fee for processing or publicizing applications for permits issued under these Articles and

for reviewing, processing and publicizing applications for construction grant awards under the Federal Water Pollution Control Act; provided, however, that there shall be no fee charged to any farmer who submits an application which pertains to his farming operations. Any fees related to construction grants charged by the Commission shall be consistent with federal regulations. Fees for processing permits under these Articles shall not exceed one hundred dollars (\$100.00) for any single permit application. No regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4. Rules or regulations relating to permit or grant application fees shall be subject to a public hearing, prior to adoption, held under procedures established by the Environmental Management Commission.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as precribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Environmental Management Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.

(4) To delegate such of the powers of the Environmental Management Commission as the Environmental Management Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department of Natural Resources and Community Development; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Environmental Management Commission; and provided further that the Environmental Management Commission shall not delegate to

persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Department of Natural Resources and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Environmental Management Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Environmental Management Commission has occurred, or, in the discretion of the Environmental Management Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Environmental Management Commission may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Environmental Management Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Environmental Management Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Environmental Management Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Environmental Management Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department of Natural Resources and Community Development and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department of Natural Resources and Community Development shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Department of Natural Resources and Community Development shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department of Natural Resources and Community Development to collect, handle or weigh numerous

specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Department of Natural Resources and Community Development on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or 143.215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Environmental Management Commission, after public hearing held pursuant to the provisions of G.S. 143-215.4, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Environmental Management Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Environmental Management Commission that the

generalized condition of water or air pollution has ceased.

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each county, city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State, and federal government; and to any other person whom the Environmental Management Commission believes to have a direct interest therein.

interest therein.

Any person who is adversely affected by the order of the Environmental Management Commission may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal.

(9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Environmental Management Commission pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or 143-215.109, the Environmental Management Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Environmental Management Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Environmental Management Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.
(10) To require any laboratory facility performing or seeking to perform

any tests, analyses, measurements, or monitoring required by this Article or regulations of the Environmental Management Commission implementing the provisions of this Article to be certified by the Environmental Management Commission in accordance with standards established for such facilities in its regulations; and to charge a

reasonable fee for certifying any such laboratory facility.

(11) Local Air Pollution Control Programs. —

a. To review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and any applicable standards and rules and regulations pursuant thereto. The Environmental Management Commission shall certify any local program which:

1. Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article, and the standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;

2. Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;

3. Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and

4. Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any

applicable rules and regulations pursuant thereto.
b. No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of subdivision (11) of subsection (a) of this section

and is so certified by the Environmental Management Commission.

c. If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such areawide program as the only acceptable alternative to direct State administration.

d. 1. If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Environmental Management Commission shall, upon due

notice, conduct a hearing on the matter.

2. If, after such hearing the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

3. If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements

in the affected jurisdiction.

4. If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

5. Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to paragraph 3 of this subdivision may, with the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for

certification by the Environmental Management Commission.

6. Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission

takes specific action to the contrary.

7. Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article and other applicable requirements of law.

8. Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem

necessary.

e. Local air pollution control programs authorized. —

1. The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

I. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

II. Air-quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

III. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor

atmosphere;

IV. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules,

regulations and standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this subdivision;

V. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

VI. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

2. Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Department of Natural Resources and Community Development and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminate specified for the requirement of a permit to do or carry out specified for the requirement of the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary

to establish and maintain an air pollution control program.

3. The penalty for violation of any of the requirements contained in such ordinances, resolutions, rules or regulations shall, upon conviction, be a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days, except that the penalty for violation of an order for the abatement of air pollution issued by the governing body after notice and hearing shall, upon conviction, be a fine of not more than two hundred fifty dollars (\$250.00) or imprisonment for not more than 30 days. Each day in violation shall constitute a separate offense and shall be subject to the foregoing penalties.

4. Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this
Article for any violation of same. 5. In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

6. Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Chapter 150A of the General Statutes, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

f. Administration of county or municipal air pollution control programs. — Subject to the approval of the Environmental Management Commission as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

1. Establishing a program under the administration of the duly elected governing body of the county or municipality;

- 2. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board.
- of the chairman or any two members of the board;
 3. Appointing an air pollution control board as provided in this section, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administraive agent for the air pollution control board; and

4. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

g. Creation and administration of regional air pollution control programs. — In addition to any other powers provided by law and subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an areawide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their

successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Environmental Management Commission shall fix a place and time for a hearing before the Environmental Management Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Environmental Management Commission shall either affirm, modify or set aside the order of the assistant director.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the pre-

ceding paragraph of this provision shall apply.

(13) To certify and approve for eligibility any qualified application for State or federal grant funds available for the construction, modification, extension, maintenance, or operation of a disposal system or portion thereof. As a condition of certification and approval of any such application and of the permit issued pursuant to G.S. 143-215.1, the Environmental Management Commission may require that the applicant conform to all applicable requirements of the State or federal laws and programs under which said grant funds are available.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Environmental Management Commission for a variance from rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Environmental Management Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting

a variance hereunder, the Commission shall find that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, regulations, standards or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act or the Federal Clean Air Act; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act or the Federal Clean Air Act shall also be entitled to the same variance from or modification in rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8.)

Editor's Note. -

The 1979 amendment, effective July 1, 1979, deleted "amendments of 1972" after "Control Act" near the end of the first sentence of subdivision (1) of subsection (a), added subdivision (14) of subsection (a) deleted "but only after public hearing on due notice, if it finds that" at the end of the second sentence of the introductory paragraph of subsection (e); and in

subdivision (2) of subsection (e), substituted "found to be economically reasonable" for "economically achievable" near the beginning, and deleted "amendments of 1972" after "Control Act," in two places, near the middle and near the end.

As the rest of the section was not changed by the amendment, only subsections (a) and (e) are set out.

§ 143-215.4. General provisions as to procedure; seal; hearing officer.

Cited in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.5. Judicial review.

Cited in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.6. Enforcement procedures. — (a) Civil Penalties. —

(1) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Environmental Management Commission against any person who:

a. Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1 or 143-215.

b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

d. Fails to file, submit, or make available, as the case may be, any

documents, data or reports required by this Article. e. Refuses access to the Environmental Management Commission or its duly designated representative to any premises for the purpose

of conducting any investigations provided for in this Article.

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Environmental Management Commission may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues.

(3) 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.

(4) The Environmental Management Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Environmental Management Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes.

(c) Injunctive Relief. — Whenever the Department of Natural Resources and Community Development has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article, any of the terms of any permit issued pursuant to this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural Resources and Community Development may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11.)

Editor's Note. -

The 1979 amendment, effective July 1, 1979, substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" in the introductory paragraph of subdivision (1) of subsection (a), substituted "limitation or management practice" for "or limitation" in paragraph a of subdivision (1) of subsection (a), substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" near the end of subdivision (2) of subsection (a), and inserted "any of the terms of any permit issued pursuant to this Article" near the beginning of the first sentence of subsection (c).

As subsection (b) was not changed by the amendment, it is not set out.

Part 2. Regulation of Use of Water Resources.

§ 143-215.13. Declaration of capacity use areas.

Informal Rule-Making Procedure Is Not Commission to serve the function of a general Subject to Review under § 150A-43 et seq. — An informal hearing conducted by the Commission to consider whether to initiate a proceeding to declare the Yadkin River Basin a capacity use area was no more than the rule-making type procedure under subsection (c) of this section, and thus the plaintiffs were not entitled to judicial review under § 150A-43 et seq. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Subsection (d) of this section operates as a statutory limititation on the standing of parties interested in or affected by the action to seek judicial review. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Where No Order Was Issued Which Could Adversely Affect Plaintiff No Judicial Review Was Possible. - A hearing held by the information gathering tool to inject public participation at a stage of decision-making generally reserved to staff participation, was an informal stage of the decision-making process with respect to this section's considerations, and the use of evidence presented at that hearing to consider whether to initiate a proceeding under this section was purely within the discretion of the Commission. Since no order was issued by the Commission which in turn could have adversely affected the plaintiffs, they were not entitled to judicial review under this section. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.14. Regulations within capacity use areas; scope and procedures.

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.15. Permits for water use within capacity use areas procedures.

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n. 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.16. Permits for water use within capacity use areas — duration. transfer, reporting, measurement, present use, fees and penalties.

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Part 3. Dam Safety Law.

Session Laws 1979, c. 736, amended Session Laws 1977, c. 712, s. 2 (§ 143-34.11), so as to

delete this Part from the list of statutes repealed.

§ 143-215.24. Declaration of purpose.

Applied in Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

§ 143-215.27. Repair, alteration, or removal of dam. — (a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction. (1979, c. 55, s. 1.)

Editor's Note. — The 1979 amendment Applied in Wells v. Benson, 40 N.C. App. 704, substituted "may" for "shall" in the last 253 S.E.2d 602 (1979). sentence of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 143-215.28. Action by Environmental Management Commission upon applications.

Applied in Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

§ 143-215.32. Inspection of dams.

which the Dam Safety Law seeks to prevent are evils which ensue from dam failure. It is only in the event that the condition of the dam is such as to present a threat of physical damage to surrounding property owners that the Commission is empowered to require owners to repair the dam. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

Purpose of Dam Safety Law. — The evils When Commission May Not Require Repair of Dam. - The Dam Safety Law does not authorize the Environmental Management Commission to require the owners of a private washed-out dam to repair rather than remove the dam when the condition of the dam is not such as to present a threat of physical damage to surrounding property owners. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

§ 143-215.33. Administrative hearing; judicial review. — (a) Any person to whom an order or decision has been issued pursuant to this Part shall be entitled to an administrative hearing before the Commission, or its designated hearing officer or officers, to be conducted in the county in which the dam is located, in accordance with Article 3 of Chapter 150A of the General Statutes upon written request by such person within 10 days after notice of the order or decision has been given to the person, personally or by registered or certified mail.

(b) Any person entitled to a hearing under subsection (a) of this section may

appeal the final decision of the Commission to the superior court in accordance with Article 4 of Chapter 150A of the General Statutes, except that a petition seeking review under G.S. 150A-45 may be filed either in the county where the dam is located or in Wake County. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23; 1975,

c. 842, s. 4; 1977, c. 878, s. 6; 1979, c. 55, s. 2.)

Editor's Note. -

The 1979 amendment rewrote this section.

Purpose of Dam Safety Law. - The evils which the Dam Safety Law seeks to prevent are evils which ensue from dam failure. It is only in the event that the condition of the dam is such as to present a threat of physical damage to surrounding property owners that the Commission is empowered to require owners to repair the dam. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

When Dam Need Not Be Repaired. - The Dam Safety Law does not authorize the Environmental Management Commission to require the owners of a private washed-out dam to repair rather than remove the dam when the condition of the dam is not such as to present a threat of physical damage to surrounding property owners. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

Notice of Actions and Orders. — Petitioners who were not landowners whose property would be endangered by a failure of a private dam were not entitled to notice of actions and orders of the Environmental Management Commission with respect to the dam. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

Part 6. Floodway Regulation.

§ 143-215.54. Floodway uses. — (a) Local governments are empowered to grant permits for the use of the floodways consistent with the purposes of this Part and for purposes which the State does not regulate either by a permit or a formal approval system.

(b) The following uses may be made of floodways as a matter of right without

a permit issued under this Part:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;

(2) Ground level loading areas, parking areas, rotary aircraft ports and

other similar ground level area uses;

(3) Lawns, gardens, play areas and other similar uses;

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses. (1971, c. 1167, s. 3; 1973, c. 621, s. 8; 1979, c. 413, ss. 1, 2.)

Editor's Note. — The 1979 amendment added "and for purposes which the State does not regulate either by a permit or a formal approval system" at the end of subsection (a), added "Ground level" at the beginning of subdivision (b)(2), substituted "ground level area" for "industrial-commercial" in subdivision (b)(2), deleted "parking," following "gardens," in subdivision (b)(3), deleted "swimming pools," preceding "hiking" in subdivision (b)(4), and deleted subdivisions (b)(5) through (b)(8), which

read: "(5) Streets, bridges, overhead utility lines, railway lines and rights-of-way, creek and storm drainage facilities, sewage or waste treatment plant outlooks, water supply intake structures, and other similar public, community or utility uses. (6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transit amusement enterprises. (7) Boat docks, ramps, piers, or similar structures. (8) Dams."

Part 7. Water and Air Quality Reporting.

§ 143-215.67. Acceptance of wastes to disposal systems and air-cleaning devices. — (a) No person subject to the provisions of G.S. 143-215.1 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the

disposal system or cleaning device cannot adequately treat.

(b) The Environmental Management Commission may authorize a unit of government subject to the provisions of G.S. 143-215.67(a) to accept additional wastes to its waste-disposal system upon a finding by the Environmental Management Commission (i) that the unit of government has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste disposal system which will adequately treat the additional waste, and (ii) the additional waste will not result in any significant degradation in the quality of the waters ultimately receiving such discharge. The Environmental Management Commission may impose such conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement the provisions of this subsection, including conditions on the size, character, and number of additional dischargers. Nothing in this subsection shall be deemed to authorize a unit of government to violate water quality standards, effluent limitations or the the terms of any order or permit issued under Part 1 of this Article nor does anything herein preclude the Commission from enforcing by appropriate means the provisions of Part 1 of this Article. (1971, c. 1167, s. 9; 1979, c. 566.)

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

Part 8. Grants for Water Resources Development Projects.

§ 143-215.70. Secretary of Natural Resources and Community Development authorized to accept applications. — The Secretary of the Department of Natural Resources and Community Development is authorized to accept applications for grants for nonfederal costs relating to water resources development projects from units of local government sponsoring such projects, except that this shall not include small watershed projects reviewed by the State

Soil and Water Conservation Commission pursuant to G.S. 139-55. (1979, c. 1046, s. 1.)

Editor's Note. — Session Laws 1979, c. 1046. s. 3, makes this Part effective July 1, 1979.

§ 143-215.71. Purposes for which grants may be requested. — Applications for grants may be made for the nonfederal share of water resources development projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

(1) General navigation projects that are sponsored by local governments -

eighty percent (80%);
(2) Recreational navigation projects — twenty-five percent (25%);
(3) Construction costs for water management (drainage) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent

- (4) Stream restoration sixty-six and two-thirds percent (66²/₃%);
 (5) Protection of privately owned beaches where public access is allowed and provided for seventy-five percent (75%);
 (6) Land acquisition and facility development for recreation sites operated by local governments at impoundments owned by the United States fifty percent (50%). (1979, c. 1046, s. 1.)
- § 143-215.72. Review of applications. (a) The Secretary shall receive and review applications for the grants specified in this Part and approve, approve in part, or disapprove such applications.

(b) In reviewing each application, the Secretary shall consider:

- (1) The economic, social, and environmental benefits to be provided by the
- (2) Regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;

(3) The financial resources of the local sponsoring entity;

(4) The environmental impact of the project;

- (5) Any direct benefit to State-owned lands and properties. (1979, c. 1046, s. 1.)
- § 143-215.73. Recommendation and disbursal of grants. After review of grant applications, the Secretary shall forward those approved or approved in part to the Advisory Budget Commission, which shall review the recommendations and approve or disapprove the transfer of funds from the Department's reserve fund into accounts for specific projects. After approval by the Advisory Budget Commission, project funds shall be disbursed and monitored by the Department of Natural Resources and Community Development. (1979, c. 1046, s. 1.)
 - § 143-215.74: Reserved for future codification purposes. too begins of ferreture to the feetiles beauty through a feetile to the second of the

ARTICLE 21A.

Oil Pollution and Hazardous Substances Control.

Part 1. General Provisions.

§ 143-215.75. Title. — This Article shall be known and may be cited as the "Oil Pollution and Hazardous Substances Control Act of 1978." (1973, c. 534, s. 1; 1979, c. 535, s. 1.)

Editor's Note. — The 1979 amendment Pollution Control Act of 1973" at the end of the substituted "Oil Pollution and Hazardous section.

Substances Control Act of 1978" for "Oil

§ 143.215.76. Purpose. — It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products, oil by-products, and other hazardous substances. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq., as amended, and the National Contingency Plan for removal of oil adopted pursuant thereto. (1973, c. 534, s. 1; 1979, c. 535, s. 2.)

Editor's Note. — The 1979 amendment hazardous substances" for "and oil substituted "oil by-products, and other by-products" at the end of the first sentence.

§ 143-215.77. Definitions. — As used in this Article, unless the context

otherwise requires:
(4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the Environmental Management Commission to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches); provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

(5) "Having control over oil or other hazardous substances" shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and

bailees of such oil or other hazardous substances.

(5a) "Hazardous substance" shall mean any substance, other than oil, designated by regulation of the Commission upon a finding that the discharge of the substance in any minimum prescribed quantity into or upon the waters of the State or upon lands in the State presents an imminent and substantial danger to public health or welfare; or to fish, shellfish, wildlife, or vegetation. Provided, that only those substances and corollary harmful quantities which have been designated by the Administrator of the United States Environmental Protection Agency pursuant to 33 U.S.C. 1321(b)(2)(A) shall be designated by the Commission as hazardous substances. Additions to or deletions from the list of hazardous substances by the Administrator of the Environmental Protection Agency shall be deemed to be automatically added to or deleted from this definition unless the Commission objects within 120 days of publication of the action in the Federal Register. If the Commission objects to a particular addition or deletion, the substance so designated will neither be added to nor deleted from the definition pending a public hearing pursuant to Article 2 of Chapter 150A of the General Statutes.

(6) Repealed by Session Laws 1979, c. 981, s. 5.

(9) "Bailee" shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

(10) "Carrier" shall mean any person who engages in the transportation of

oil or other hazardous substances for compensation.

(15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(16) "Transfer" shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels;

and between or among two or more vessels.

(1979, c. 535, ss. 3-10; c. 981, ss. 3-5.)

Editor's Note. -

The first 1979 amendment inserted "or other hazardous substances" throughout subdivisions (4), (5), (6), (9), (10), (15), and (16). The amendment also substituted "in accepted" for "on" and "practices" for "crops" near the end of the first sentence of subdivision (4), added the second proviso at the end of that sentence, added subdivision (5a), substituted "'Bailee'" for "'Oil bailee'" at the beginning of subdivision (9), and substituted "'Carrier'" for "'Oil carrier'" at the beginning of subdivision (10).

The second 1979 amendment added the second sentence of subdivision (4), inserted "or upon lands in the State" near the middle of the first sentence of subdivision (5a), and repealed subdivision (6), which read: "'Land' shall mean only land from which it is reasonably likely that oil will flow into the waters of this State."

As the other subdivisions were not changed by

the amendments, they are not set out.

§ 143-215.78. Oil pollution control program. — The Department shall establish an oil pollution control program for the administration of this Article.

The Department may employ and prescribe the duties of employees assigned to this activity. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 11.)

Editor's Note. — The 1979 amendment deleted "within the office" after "establish" near the middle of the first sentence.

§ 143-215.79. Inspections and investigations; entry upon property. — The Environmental Management Commission, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil or other hazardous substances discharged to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Environmental Management Commission are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil or other hazardous substances discharges or to perform any restoration necessitated by an oil or other hazardous substances discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil or other hazardous substances removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 12.)

Editor's Note. — The 1979 amendment inserted "or other hazardous substances" throughout the section.

§ 143-215.82. Local ordinances. — Nothing in the Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage district or other authorized local governmental entity, by ordinance, regulation or law, from exercising police powers with reference to the prevention and control of oil or other hazardous substances discharges to sewers or disposal systems. (1973, c. 534, s. 1; 1979, c. 535, s. 13.)

Editor's Note. — The 1979 amendment inserted "or other hazardous substances" near the end of the section.

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges. — (a) Unlawful Discharges. — It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted Discharges. — This section shall not apply to discharges of oil

or other hazardous substances in the following circumstances:

(1) When the discharge was authorized by an existing regulation of the Environmental Management Commission.

(2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:

a. An act of God.

b. An act of war or sabotage.

c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.

d. An act or omission of a third party, whether any such act or omission

was or was not negligent.

e. Any act or omission by or at the direction of a law-enforcement

officer or fireman.

(c) Permits. — Any person who desires or proposes to discharge oil or other hazardous substances onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the Environmental Management Commission. Any permit granted pursuant to this subsection may contain such terms and conditions as the Environmental Management Commission shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein. (1973, c. 534. s. 1; c. 1262, s. 23; 1979, c. 535, s. 14.)

Editor's Note. — The 1979 amendment inserted "or other hazardous substances" throughout the section.

§ 143-215.84. Removal of prohibited discharges. — (a) Person Discharging. - Any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been

previously approved by the Environmental Management Commission.

(b) Removal by Department. — Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c) The Secretary of the Department of Transportation is authorized and empowered, after consultation with the Secretary of Natural Resources and Community Development, to purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b). These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary of the Department of Natural Resources and Community Development or his designee will, after consultation, decide where the trucks are to be located.

(1979, c. 535, s. 15.)

Editor's Note. —

The 1979 amendment inserted "or other hazardous substances" near the beginning of the first sentence of subsection (a), near the end of the first sentence of subsection (b), and near

the end of the second sentence of subsection (c).

As subsection (d) was not changed by the amendment, it is not set out.

§ 143-215.85. Required notice. — Every person owning or having control over oil or other substances discharged in any circumstances other than pursuant to existing regulation of the Environmental Management Commission or the U.S. Environmental Protection Agency or pursuant to a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary of Natural Resources and Community Development or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Secretary of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board; provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; c. 858, s. 1; 1979, c. 535, ss. 16, 17.)

Editor's Note. -

The 1979 amendment substituted "or other substances discharged in any circumstances other than pursuant to existing regulation of the Environmental Management Commission or the U.S. Environmental Protection Agency or

pursuant to a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act" for stances "discharged in violation of the provisions of this Article" near the beginning of the first sentence, and added the third and fourth sentences.

§ 143-215.86. Other State agencies and State designated local agencies. —
(a) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission, and any other agency of this State and any local agency designated by the State shall cooperate with and lend assistance to the Environmental Management Commission by assigning to the Environmental Management Commission upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil or other hazardous substances discharged upon the land or into the waters of this State.

(c) Accounts. — Every State agency or other State-designated local agency participating in the containment, collection, dispersal or removal of an oil or other hazardous substances discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such

project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Environmental Management Commission upon completion of the project or activity. (1973, c. 507, s. 5; c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, ss. 18, 19.)

Editor's Note. -

The 1979 amendment inserted "and any local agency designated by the State" near the middle of subsection (a), inserted "or other State-designated local agency" near the beginning of the first sentence of subsection (c),

and inserted "or other hazardous substance" near the end of subsection (a) and near the beginning of the first sentence of subsection (c).

As subsection (b) was not changed by the amendment, it is not set out.

§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund. — There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 20.)

Editor's Note. — The 1979 amendment inserted "or other hazardous substances" throughout the section.

S 143-215.88. Payment to State agencies or State-designated local agencies. — Upon completion of any oil or other hazardous substances removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State or any State-designated local agency that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary to each such agency from the Oil or Other Hazardous Substances Pollution Protection Fund. Upon completion of any oil or other hazardous substances removal or restoration project or activity, the Secretary shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil or other hazardous substances discharged to the land or waters of the State, unless the Environmental Management Commission shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.83(b). Any person having control of oil or other hazardous substances discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil or other hazardous substances shall be directly liable to the State for the necessary expenses of oil

or other hazardous substances cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil or other hazardous substances discharged shall fail or refuse to pay the sum expended by the State, the Secretary shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 858, s. 2; 1979, c. 535,

Editor's Note. -

The 1979 amendment inserted "or any State-designated local agency" near the middle of the first sentence, and inserted "or other hazardous substances" throughout the section.

§ 143-215.89. Multiple liability for necessary expenses. — Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances discharged shall fail or refuse to pay the sum expended by the State, the Secretary shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 858, s. 2; 1979, c. 535, ss. 21, 22.)

Editor's Note. — The 1979 amendment sentence, and near the middle of the second inserted "or other hazardous substances" near the beginning and near the middle of the first

sentence.

§ 143-215.90. Liability for damage to public resources. — (a) Any person who discharges oil or other hazardous substances in violation of this Article or violates any order, rule or regulation of the Environmental Management Commission adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Environmental Management Commission made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Environmental Management Commission, shall be liable to pay the State damages. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the Environmental Management Commission in connection with such violation and the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury as such condition is determined by the Environmental Management Commission in conference with the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any such boards, commissions, and agencies).

(b) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall become due and payable upon receipt of such notice. Upon written application to the Department within 30 days of receipt of notice, the person assessed damages may request an administrative hearing pursuant to G.S. 143-215.4. On such hearing, the estimate of the replacement cost of fish or animals or vegetation destroyed, and the estimate of costs of replacing or restoring other resources of the State, and the estimate of the cost of restoring the quality of waters of the State shall be prima facie evidence of the actual replacement cost of fish, animals, vegetation or other resources of the State, and of the actual cost of restoring the quality of the waters of the State; provided, that such evidence is rebuttable. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Department or Wildlife Resources Commission to collect, handle, or weigh numerous specimens of dead or injured fish, animals, vegetation or other resources of the State, or to calculate the costs of restoring the quality of the waters using any technology other than that which is existing and practicable, as found to be such by the Secretary. Provided, that the Department may effect such mitigation of the amount of damages as the commission may deem proper and reasonable. Appeal from final determination of the commission or its agents pursuant to such a hearing shall be pursuant to G.S. 143-215.5. If the damages are not paid to the Department within 30 days of receipt of notice, or if the amount of damages provided in an order issued subsequent to an application to the Department is not paid within 30 days of the issuance thereof, the Attorney General, upon request of the Department, shall bring an action to recover such damages in the name of the State, in the Superior Court of Wake County, or in his discretion, in the superior court of any other county in which the damages occurred. Upon such action being brought, the scope of the court's review shall be as provided in G.S. 150A-51. Any money recovered by the Attorney General or by payment of damages by the person charged therewith by the Department shall be transferred by the Environmental Management Commission to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part.

(c) For the purpose of carrying out its duties under this Article, the Environmental Management Commission shall have the power to direct the investigation of any death, killing, or injury to fish, animals, vegetation or other resources of the State, or any reduction in quality of the waters of the State, which in the opinion of the Environmental Management Commission is of sufficient magnitude to justify investigation. (1973, c. 534, s. 1; c. 1262, s. 23;

1979, c. 535, s. 24.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 143-215.91. Penalties. — (a) Civil Penalties. — Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the Environmental Management Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, the

amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90, and such other considerations as the Environmental Management Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Environmental Management Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Environmental Management Commission may, upon written application therefor, receive within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Environmental Management Commission may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Environmental Management Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Environmental Management Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Environmental Management Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

(b) Criminal Penalties. — Any person who intentionally or knowingly or willfully discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars (\$10,000), or by both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts.

(c) The civil and criminal penalties provided by this section (except the civil penalty for failure to report) shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State. (1973, c. 534, s. 1; 1973, c. 1262, s. 23; 1979, c. 535, ss. 25, 26.)

Editor's Note. — The 1979 amendment inserted "or other hazardous substances" near the beginnings of the first sentences of subsections (a) and (b), inserted "the amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90" near the end of the first sentence of

subsection (a), and added subsection (c). The amendment inserted "or other hazardous substances" following "oil" the first time that word appears in the first sentence of subsection (a), but failed, apparently through oversight to make the insertion following the second "oil" in that sentence.

§ 143-215.92. Lien on vessel. — Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States government) from which oil or other hazardous substances is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil or other hazardous substances removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Environmental Management Commission in an amount and with sureties acceptable to the Environmental Management Commission, or a cash deposit is made with the Environmental Management Commission in an amount acceptable to the Environmental Management Commission. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The Environmental Management Commission may adopt regulations providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the Environmental Management Commission deems necessary. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 27.)

Editor's Note. — The 1979 amendment the beginning and near the middle of the first inserted "or other hazardous substances" near sentence.

§ 143-215.93. Liability for damage caused. — Any person having control over oil or other hazardous substances which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-215.83(b). (1973, c. 534, s. 1; 1979, c. 535, s. 28.)

Editor's Note. — The 1979 amendment inserted "or other hazardous substances" near the beginning of the section.

§ 143-215.94. Joint and several liability. — In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-215.88 through 143-215.91(a), 143-215.93 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or other hazardous substances or causing or contributing to the discharge of oil or other hazardous substances. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (1973, c. 534, s. 1; 1977, c. 858, s. 3; 1979, c. 535, s. 29.)

Editor's Note. -The 1979 amendment inserted "or other that sentence. hazardous substances" near the end of the first

sentence, and added that phrase at the end of

ARTICLE 21B.

Air Pollution Control.

§ 143-215.105. Declaration of policy; definitions.

Cited in Steele Creek Community Ass'n v. United States Dep't of Transp., 435 F. Supp. 196 (W.D.N.C. 1977).

§ 143-215.107. Air quality standards and classifications. — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the

State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Environmental Management Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most

effectively.

- (4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Environmental Management Commission may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Environmental Management Commission requires reporting shall make reports containing such information as may be required by the Environmental Management Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt such emission control standards as in the judgment of the Environmental Management Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Environmental Management Commmission.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission

standards in compliance with applicable federal regulations.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas; provided, that the Commission shall adopt no standard which is not made mandatory upon approved State programs by rules, regulations or published guidelines of the United States Environmental Protection Agency or the Federal Clean Air Act.

(f) In adopting air quality policies, rules, regulations and procedures, the Environmental Management Commission or any other State or local regulatory body shall be guided by the same standards, definitions, considerations and criteria set forth, from time to time, in federal law, rules or regulations for the guidance of federal, state or local agencies administering the Federal Clean Air

Program.

It is the intent of the General Assembly (i) that the air quality rules, regulations, procedures, plans, practices, air quality standards, and emission control standards adopted by the Environmental Management Commission pursuant to this Article or Article 21, or by any other State or local regulatory body under the General Statutes of North Carolina, shall be no more restrictive and no more stringent than required to comply with federal ambient air quality standards or other applicable federal requirements, if any, adopted in final or proposed regulations by the United States Environmental Protection Agency under or pursuant to the Federal Clean Air Act, and amendments thereto; except (ii) that no air quality rules, regulations, procedures, plans, practices, air quality standards or emission control standards shall be adopted by the Environmental Management Commission with respect to matters on which the United States Environmental Protection Agency has not proposed or adopted final regulations unless the Environmental Management Commission first considers, among other things, an assessment of the economic impact of the proposed standards. The Department shall prepare and submit into the record of the rule-making hearing an economic impact study of such proposed standards. Such study shall include an estimate of the economic and social costs to commerce and industry, units of local government, and agriculture necessary to comply with the proposed standards and an examination of the economic and social benefits of such compliance. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931.)

Editor's Note.

The 1979 amendment, effective July 1, 1979, added subdivision (7) of subsection (a).

The 1979 amendment, effective July 1, 1979, rewrote the first sentence of the second paragraph of subsection (f), and added the second and third sentence of that paragraph. As only subsections (a) and (f) were changed

by the amendment, the rest of the section is not set out.

§ 143-215.108. Control of sources of air pollution; permits required.

(b) The Environmental Management Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources. The Environmental Management Commission shall have the power:

(1) To grant and renew a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve

the purposes of this section;

(2) To grant and renew any temporary permit for such period of time as the Environmental Management Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To modify or revoke any permit upon not less than 60 days' written

notice to any person affected;
(4) To require all applications for permits and renewals to be in writing and

to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; and

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals

and denials shall be in writing.

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other state of any national ambient air quality standard, or interference with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air

quality or protect visibility.

The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval

of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, deleted "of the State" after "of the air" near the end of the first paragraph of subsection (b), and added subdivision (7) of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 143-215.112. Local air pollution control programs.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement

of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution

abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for

laboratory and other necessary facilities.

(2) Subject to the approval of the Environmental Management Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

a. Establishing a program under the administration of the duly elected

governing body of the county or municipality;

b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;

c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution

control board; and

d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control

board and agency.

Any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Federal Clean Air Act and any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers

shall be adequately disclosed.

(3) If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their

successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a

local health department as its administrative agent.

(4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Environmental Management Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(1979, c. 545, s. 7.)

Editor's Note. - The 1979 amendment, As only subsection (c) was changed by the effective July 1, 1979, added the second sentence amendment, the rest of the section is not set out. of paragraph d of subdivision (2) of subsection (c).

§ 143-215.114. Enforcement procedures. — (a) Civil Penalties. -

(1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed against any person who:

a. Violates any classification, standard or limitation established

pursuant to G.S. 143-215.107;

b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;

c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110; d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article; e. Repealed by Session Laws 1979, c. 545, s. 4.

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) Each day of continuing violation after written notification from the

Commission shall be considered a separate offense.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.

(4) The Environmental Management Commission, or, if authorized by the Environmental Management Commission, the Department of Natural Resources and Community Development, may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes.

(1979, c. 545, ss. 4-6.)

Editor's Note. -

§ 143-246

The 1979 amendment, effective July 1, 1979, in subsection (a), deleted paragraph e of subdivision (1), which read: "Refuses access to the Environmental Management Commission or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article; or." The amendment rewrote subdivision (2), which formerly provided for a \$5,000 per day penalty for willful violations of subsection (a), and substituted "violation and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements" for "violation and" near the end of subdivision (3).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

ARTICLE 24.

Wildlife Resources Commission.

§ 143-246. Executive Director; appointment, qualifications, duties, oath of office, and bond.

Amendment Effective July 1, 1980. - 1980, will amend this section by deleting the last Session Laws 1979, c. 830, s. 7, effective July 1, sentence.

§ 143-254.1: Repealed by Session Laws 1979, c. 830, s. 8, effective July 1, 1980.

Cross Reference. — For statute covering the § 113-307.1, subsection (c), effective July 1, subject matter of the repealed section, see 1980.

ARTICLE 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.10. Components of State Nature and Historic Preserve. — The following are components of the State Nature and Historic Preserve accepted

by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(a) All lands and waters within the boundaries of the following units of the State Parks System as of March 6, 1979: Bay Tree Lake, Bushy Lake Natural Area, Cliffs of the Neuse State Park, Crowders Mountain State Park, Duke Power Recreation Area, Fort Macon State Park, Goose Creek State Park, Hammocks Beach State Park, Hanging Rock State Park, Hemlock Bluffs Natural Area, Jockeys Ridge State Park, Jones Lake State Park, Lake Waccamaw, Lake Waccamaw State Park, Merchants Millpond State Park, Morrow Mountain State Park, Mount Jefferson State Park, Mount Mitchell State Park, Pilot Mountain State Park, Raven Rock State Park, Theodore Roosevelt Natural Area, Singletary Lake State Park, South Mountains State Park, Stone Mountain State Park, Weymouth Woods-Sandhills Nature Preserve, and White Lake; Carolina Beach State Park in New Hanover County west of Dow Road, S.R. 1573; Mitchells Millpond Natural Area in Wake County north of S.R. 2224.

(b) All lands and waters within the boundaries of Eno River State Park and William B. Umstead State Park as of March 6, 1979, with the exception of those tracts recommended for exclusion in the petition of the Council of State dated

March 6, 1979, on file with the Secretary of Administration.

(c) All lands within the boundaries of Pettigrew State Park as of March 6, 1979, with the exception of the tract recommended for exclusion in the petition of the Council of State dated March 6, 1979, on file with the Secretary of

Administration.

(d) All lands and waters located within the boundaries of the following State Historic Sites as of March 6, 1979: Alamance Battleground Historic Site, Historic Bath Historic Site, Bentonville Battleground Historic Site, Brunswick Town Historic Site, Governor Richard Caswell Memorial/C.S.S. Neuse Historic Site, Duke Homestead Historic Site, House in the Horseshoe Historic Site, James Iredell House Historic Site, President James K. Polk Memorial Historic Site, Stagville Preservation Center Historic Site, State Capitol Historic Site, Town Creek Indian Mound Historic Site, Tryon Palace Historic Site, Governor Zebulon B. Vance Birthplace Historic Site, and Thomas Wolfe Memorial Historic Site. (1979, c. 498.)

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages. — The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service,

agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred thousand dollars (\$100,000) cumulatively to all claimants on account of injury and damage to any one person. (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34; 1977, c. 529, ss. 1, 2; 1979, c. 1053, s. 1.)

Editor's Note. -

The second 1977 amendment, effective July 1, 1979, substituted "one hundred thousand dollars (\$100,000) on account of injury and damage to any one person" for "thirty thousand dollars (\$30,000)" at the end of the section.

The 1979 amendment, effective July 1, 1979, inserted "cumulatively to all claimants" following "(\$100,000)" near the end of the

section.

For note on tort liability of municipal corporations operating public hospitals in this State, see 54 N.C.L. Rev. 1114 (1976). For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977). For a survey of 1977 law on torts, see 56 N.C.L. Rev. 1136 (1978).

Jurisdiction of Commission. — The Industrial Commission had jurisdiction to hear and determine a claim alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Director of County Department of Social Services Is State Agent. — The director of a county department of social services was acting as an agent of the State Social Services Commission of the Department of Human Resources in administering a foster home Fund, although he was an employee of the county, since: (1) the county director was required by § 108-19(3) to "administer" the Foster Home Fund in the county; (2) § 108-19(5) required the county director to act as an "agent"

of the State Commission in work required by the Commission in the county; (3) the State controlled half of the members of the county board of social services which selected the county director; and (4) the State Commission, pursuant to § 108-66, controlled and regulated the county director's actions in administering the foster home program. Therefore, the State would be liable under the Tort Claims Act for the negligence of the director or his subagents in the placement of a child in a foster home under a program funded by the State Foster Home Fund, and the Industrial Commission had jurisdiction of a claim based on such alleged negligence. Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978).

State Liable for Negligence of County Director of Social Services. — In an action alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services, the Department of Human Resources would be liable for the negligent acts of its agents, the Durham County Director of Social Services and his subordinates, since the Department of Human Resources, through the Social Services Commission, has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Cited in Potter v. North Carolina School of Arts, 37 N.C. App. 1, 245 S.E.2d 188 (1978).

§ 143-292. Notice of determination of claim; appeal to full Commission. — Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have 15 days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the matter

and upon oral argument of the parties, and said full Commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. Such determination by the Industrial Commission, sitting as a full Commission, upon claims in an amount of five hundred dollars (\$500.00) or less, shall be final as to the State or any of its departments, institutions or agencies, and no appeal shall lie therefrom by the State or any of its departments, institutions or agencies. (1951, c. 1059, s. 2; 1955, c. 770; 1979, c. 581.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "15" for "seven" near the middle of the first sentence.

§ 143-295. Settlement of claims. — (a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of three thousand dollars (\$3,000), without the approval of the Industrial Commission. The Attorney General may also make settlements by agreement for claims in excess of three thousand dollars (\$3,000) and claims of infants or persons non sui juris, provided such claims have been subject to review and approval by the Industrial Commission.

(b) In settlements under three thousand dollars (\$3,000), agreed upon between the Attorney General and the claimant, the filing of an affidavit as set forth in

G.S. 143-297 shall not be required.

(c) Transfer of title of a motor vehicle acquired in behalf of the State in settlement of claim pursuant to the provisions of this Article may be transferred by the Attorney General in the same manner as provided for such transfer by an insurance company under the provisions of G.S. 20-75. (1951, c. 1059, s. 5; 1971, c. 1103, s. 1; 1973, c. 699; 1975, c. 756; 1979, c. 877.)

Editor's Note. -

The 1979 amendment, effective July 1, 1979, substituted "three thousand dollars (\$3,000)" for "one thousand dollars (\$1,000)" near the end of

the first sentence and near the middle of the second sentence of subsection (a), and near the beginning of subsection (b).

§ 143-296. Powers of Industrial Commission; deputies. — The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. (1951, c. 1059, s. 6; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, for "Workmen's" near the end of the last effective July 1, 1979, substituted "Workers'" sentence.

ARTICLE 31A.

Defense of State Employees and Medical Contractors.

§ 143-300.6. Payments of judgments; compromise and settlement of claims. — (a) All final judgments awarded in courts of competent jurisdiction against State employees in actions or suits to which this Article applies, or any amounts payable under a settlement of such suits in accordance with this section, shall be paid by the department, agency, board, commission, institution, bureau or authority which employs or employed the State employee. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered by this section. No payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors shall exceed the amount payable for any one claim under the Tort Claims Act.

(1979, c. 886.)

Editor's Note. -

The 1979 amendment, in subsection (a), substituted the present second and third sentences for a former second sentence which read: "Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or to authorize the payment of any judgment or settlement against a State employee in excess of the limit provided in the Tort Claim Act."

As only subsection (a) was changed by the amendment, the rest of the section is not set out.

For a note on the liability of those charged as custodians of the convicted for personal injuries inflicted by inmates, parolees, and probationers, see 13 Wake Forest L. Rev. 668 (1977).

§ 143-300.7. Defense of medical contractors. — Notwithstanding any other provisions of this Article, any person or professional association who at the request of the Department of Correction provides medical and dental services to inmates in the custody of the Department of Correction and who is sued pursuant to the Federal Civil Rights Act of 1871 may be defended by the Attorney General and shall be protected from liability for violations of civil rights in accordance with the provisions of this Article. (1979, c. 1053, s. 2.)

Editor's Note. — Session Laws 1979, c. 1053, s. 3, makes this section effective July 1, 1979.

§§ 143-300.8 to 143-300.12: Reserved for future codification purposes.

ARTICLE 31B.

Defense of Public School Employees.

§ 143-300.13. Definition of public school employee. — For the purpose of this Article, a public school employee is a person whose major responsibility is to teach or directly supervise teaching and who is employed in either a full-time or part-time capacity, including, but not limited to, the superintendent, assistant or associate superintendent, principal, assistant principal, classroom teacher, substitute teacher, supervisor, teacher aide, student teacher, or school nurse. (1979, c. 971, s. 2.)

3, provides: "Section 2 of this act shall become effective July 1, 1979 and applies to all civil

Editor's Note. - Session Laws 1979, c. 971, s. actions commenced on or after that date, and to all claims based upon conduct occurring on or after that date."

§ 143-300.14. Defense of public school employees. — Except as provided in G.S. 143-300.15, the State shall provide defense counsel for the employee against whom a claim is made or civil action is commenced for personal injury on account of an act done or omission made in the course of the employee's duties under G.S. 115-146.1; provided that, no later than 30 days after the employee is notified of a claim or 10 days after the employee is served with complaint of the injured party, the employee gives written notice of the claim or action to the Attorney General which notice shall include:

(1) The name and address of the claimant and his attorney;

(2) A concise statement of the basis of the claim;

(3) The name and address of any other employees involved; and

- (4) A copy of any correspondence received by the employee and legal documents served on the employee pertaining to the claim or civil action. (1979, c. 971, s. 2.)
- § 143-300.15. Refusal of defense. The Attorney General may refuse to defend an employee for any of the reasons listed in G.S. 143-300.4(a). (1979, c. 971, s. 2.)
- § 143-300.16. Payment of judgments and settlement of claims. (a) Any final judgment awarded against an employee in an action which meets the requirements of G.S. 143-300.14, or any amount payable under a settlement of such an action, shall be paid from the appropriation for the payment of State Tort Claims, except that no payment shall be made from that appropriation for any judgment for punitive damages. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or authorize the payment of any judgment or settlement against a public school employee in excess of the limit provided in the Tort Claims Act.

(b) The Attorney General may settle any claim to which this Article applies which he finds valid. In any case in which the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, any settlement shall be approved by the private counsel

and the Attorney General.

(c) The coverage afforded an employee under this Article is excess coverage over any commercial insurance liability that the employee may have. (1979, c. 971. s. 2.)

- § 143-300.17. Employee's obligation for attorney fees. If any employee has been defended by the Attorney General, or if the State has provided private counsel for an employee, and judgment rendered on the claim establishes that the act or omission complained of did not meet the requirements of G.S. 115-146.1, the judgment against the employee may provide for payment to the State of its costs including a reasonable attorney fee. (1979, c. 971, s. 2.)
- § 143-300.18. Protection is additional. The protection to employees provided in this Article is in addition to any other protection provided in the General Statutes. (1979, c. 971, s. 2.)

ARTICLE 33B.

Meetings of Governmental Bodies.

§§ 143-318.1 to 143-318.8: Repealed by Session Laws 1979, c. 655, s. 1.

ARTICLE 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy. — Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s.

Editor's Note. — Session Laws 1979, c. 655, s. 3, provides: "All provisions of general laws, city charters, and local acts in effect as of October 1, 1979, and in conflict with the provisions of G.S. Chapter 143, Article 33C, as enacted by Section 1 of this act, are repealed insofar as they conflict with the provisions of G.S. Chapter 143, Article 33C. No general law, city charter, or local act enacted or taking effect after October 1, 1979, may be construed to modify, amend, or repeal any provision of Article 33C unless it expressly

so provides by specific reference to the appropriate section number of that Article."

Session Laws 1979, c. 655, s. 4, makes this

Article effective October 1, 1979.

For article, "Interpreting North Carolina's Law," see 54 N.C.L. Rev. 777 (1976). For survey of 1976 case law dealing with administrative law. see 55 N.C.L. Rev. 898 (1977). For a survey of 1977 law on open meetings, see 56 N.C.L. Rev. 861 (1978).

§ 143-318.10. All official meetings of public bodies open to the public. -(a) Except as provided in G.S. 143-318.11, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members; and
(1) Exercises or is authorized to exercise a legislative, policy-making,
quasi-judicial, administrative, or advisory function; and
(2) Is established by (i) the State Constitution, (ii) an act or resolution of the

General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an executive order of the Governor or comparable formal action of the head of a principal State office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or of a division thereof.

In addition, "public body" means (1) the governing board of a "public hospital" as defined in G.S. 159-39 and (2) each committee of a public body, except a committee of the governing board of a public hospital if the committee is not a policy-making body.

(c) "Public body" does not include and shall not be construed to include (1) meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b)(2) of this section, or (2) meetings among the medical staff

of a public hospital. "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article. (1979, c. 655, s. 1.)

§ 143-318.11. Executive sessions. — (a) Permitted purposes. A public body

may hold an executive session and exclude the public:

(1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. At the conclusion of all negotiations with regard to the acquisition or lease of real property, if final authorization to acquire or lease is to be given, it shall be given

at an open meeting.
(2) To consider and authorize the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a

(3) To consider and authorize the acquisition by any means of paintings, sculptures, objects of virtu, artifacts, manuscripts, books and papers, and similar articles and objects that are or will be part of the collections

of a museum, library, or archive.

(4) To consider the validity, settlement, or other disposition of a claim against or on behalf of the public body or an officer or employee of the public body or in which the public body finds that it has a substantial interest; or the commencement, prosecution, defense, settlement, or litigation of a potential or pending judicial action or administrative proceeding in which the public body or an officer or employee of the public body is a party or in which the public body finds that it has a substantial interest. During such an executive session, the public body may give instructions to an attorney or other agent concerning the handling or settlement of a claim, judicial action, or administrative proceeding. If a public body has considered a settlement in executive session, the terms of that settlement shall be reported to the public body and entered into its minutes within a reasonable time after the settlement is concluded.

(5) To consult with an attorney, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

(6) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

(7) To consider matters dealing with specific patients (including but not limited to all aspects of admission, treatment, and discharge; all medical records, reports, and summaries; and all charges, accounts, and credit

information pertaining to such a patient).

(8) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against a public officer or employee. A public body may consider the appointment or removal of a member of another body in executive session but may not consider or fill a vacancy among its own membership except in an open meeting.

Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. If a public body considers an appointment to another body, except a committee composed of members of the public body, in executive session, it shall, before making that appointment, present at an open meeting a written list of the persons then being considered for the appointment, and that list shall on the same day be made available for public inspection in the office of the clerk or secretary to the public body. The public body may not make the appointment before the seventh day after the day on which the list was presented.

(9) To consider the employment, performance, or discharge of an independent contractor. Any action employing or authorizing the employment or discharging or directing the discharge of an independent contractor shall be taken at an open meeting.

(10) To hear, consider, and decide (i) disciplinary cases involving students or pupils and (ii) questions of reassignment of pupils under G.S. 115-178.
(11) To identify candidates for, assess the candidates' worthiness for, and

choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body.

(12) To consider information, when State or federal law (i) directs that the information be kept confidential or (ii) makes the confidentiality of the

information a condition of State or federal aid.

(13) To consider and adopt contingency plans for dealing with, and consider and take action relating to, strikes, slowdowns, and other collective employment interruptions.

(14) To consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent.

(15) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(16) To consider and decide matters concerning specific inmates of the correction system or security problems of the correction system.

(17) To hear, consider, and decide matters involving admission, discipline, or termination of members of the medical staff of a public hospital. Final action on an admission or termination shall be reported at an open

(18) To consider and give instructions relating to the setting or negotiation of airport landing fees or the negotiation of contracts, including leases, concerning the use of airport facilities. Final action approving landing fees or such a contract shall be taken in an open meeting.

(b) General Assembly committees and subcommittees. Except as provided in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State. A committee or subcommittee may take final action only in an open meeting.

(c) Calling an executive session. A public body may hold an executive session only upon a motion made and adopted at an open meeting. The motion shall state the general purpose of the executive session and must be approved by the vote

of a majority of those present and voting.

(d) Minutes of executive session. Notwithstanding the provisions of G.S. 132-6, minutes and other records made of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session. (1979, c. 655, s. 1.)

§ 143-318.12. Public notice of official meetings. — (a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary

of State:

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city

government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held

pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting, notice of which has been given pursuant to this subsection, and the time and place of the adjourned or recessed session has been set during the regular or other meeting, no further

notice is necessary.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed or delivered to each newspaper, wire service, radio station, and television station, which has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars (\$10.00) per calendar year, and may require them to renew their requests quarterly.

(3) For an emergency meeting, the public body shall cause notice of the

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. An "emergency meeting" is one called because of generally unexpected circumstances

that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) This section does not apply to the General Assembly. Each house of the General Assembly shall provide by rule for notice of meetings of legislative

committees and subcommittees. (1979, c. 655, s. 1.)

§ 143-318.13. Electronic meetings; written ballots; acting by reference. — (a) Electronic meetings. If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) Written ballots. Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that

meeting are approved, at which time the ballots may be destroyed.

(c) Acting by reference. The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting. (1979, c. 655, s. 1.)

§ 143-318.14. Broadcasting or recording meetings. — (a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site. (1979, c. 655, s. 1.)

§ 143-318.15. Advisory Budget Commission and appropriation committees of General Assembly; application of Article. — (a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) This Article does not amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees and

subcommittees of the General Assembly. (1979, c. 655, s. 1.)

§ 143-318.16. Injunctive relief against violations of Article. — (a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved

- (c) If the plaintiff prevails in an action brought pursuant to this section, the court may allow a reasonable attorney's fee to be taxed against the defendant as a part of costs, if the court finds as a fact that the violation was willful. If the defendant prevails and the court finds that the action was frivolous, the court may allow a reasonable attorney's fee to be taxed against the plaintiff as a part of costs. (1979, c. 655, s. 1.)
- § 143-318.17. Disruptions of official meetings. A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment for not more than six months, by fine of not more than two hundred fifty dollars (\$250.00), or both. (1979, c. 655, s. 1.)
 - § 143-318.18. Exceptions. This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission. (4) The Legislative Services Commission.

(5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supercede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.
(8) The boards of trustees of endowment funds authorized by G.S. 116-36.

(9) The Council of State.(10) The Board of Awards.

(11) The General Court of Justice. (1979, c. 655, s. 1.)

Editor's Note. -For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898

ARTICLE 36.

Department of Administration.

§ 143-340. Powers and duties of Secretary. — The Secretary of

Administration has the following powers and duties:

(1) To establish a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed twenty-five percent (25%) of the savings resulting during the first year following adoption or a maximum of five thousand dollars (\$5,000).

(14) With respect to the principal State offices and Departments as defined in G.S. 143A-11 and 143B-6, or a division thereof, to exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of State government. In discharging that responsibility the Secretary may in cooperation with affected State Agency Heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing of the following systems and services as they affect the internal management and

operation of State government:

1. Central telephone systems and telephone networks;

2. Teleprocessing systems;

3. Teletype and facsimile services;
4. Satellite services;
5. Closed-circuit TV systems;

6. Two-way radio systems;

7. Microwave systems;

8. Related systems based on telecommunications technologies.

b. Coordinate the development of cost sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item a of this subdivision, in accordance with the rules and regulations adopted by the Governor and approved by the Council of State, pursuant to G.S. 143-341(8)k.

c. Assist in the development of coordinated telecommunications services or systems within and among all agencies and departments, and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item a of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State government.

f. Pursuant to G.S. 143-49 and 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities,

systems, and personnel within State government.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies and institutions on telecommunications management planning and related matters and provide through the State Personnel Training Center training to users with State government in telecommunications technology and systems.

Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.
 m. Work cooperatively with the North Carolina Agency for Public

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision. The provisions of this subdivision shall not apply to the Police Information Network (P.I.N.) of the Department of Justice or to the

Judicial Information System in the Judicial Department.

(1979, c. 901, ss. 1, 2; c. 930.)

Editor's Note. -

The first 1979 amendment, effective July 1, 1979, substituted the present subdivision (14) for a former subdivision (14) which authorized the Secretary to establish and operate an information transmission system between the various agencies of the State, local, and federal government.

The second 1979 amendment, in subdivision (1), substituted "twenty-five percent (25%)" for

"ten percent (10%)" near the end, and "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" at the end, of the subdivision.

As only subdivisions (1) and (14) were changed by the amendments, the other subdivisions are not set out.

§ 143-341. Powers and duties of Department. — The Department of Administration has the following powers and duties:

(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of all State buildings, prior to the awarding of a contract for such work; and to examine and approve

all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction

or renovation of all State buildings.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of

all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the

allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

of State.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.

buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary. form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina as grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the

performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

1. To To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146

of the General Statutes.

m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.

(1979, c. 136, s. 1; c. 544.)

Editor's Note. -

The first 1979 amendment inserted "design" in subdivision (3)c.

The second 1979 amendment added paragraph m of subdivision (4).

As only subdivisions (3) and (4) were changed by the amendments, the rest of the section is not set out.

§ 143-342.1. State-owned office space; fees for use by self-supporting agencies. — The Department shall determine equitable fees for the use of State owned and operated office space, and it shall assess all self-supporting agencies using any of this office space for payment of these fees. For the purposes of this section, self-supporting agencies are those agencies designated by the Advisory Budget Commission as being primarily funded from sources other than State appropriations. Fees assessed under this section shall be paid to the Department. (1977, 2nd Sess., c. 1219, s. 48.)

Sess., c. 1219, s. 59, makes the act effective July 1, 1978.

Editor's Note. — Session Laws 1977, 2nd Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

Editor's Note. - For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

Article does not prohibit discrimination within the meaning of 29 U.S.C. § 633(b). It merely declares that such discrimination is against the "public policy" of North Carolina. Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

Plaintiff in Federal Age Discrimination Suit Need Not Seek Relief from Human Relations Council as Jurisdictional Prerequisite. -Recourse by a plaintiff to the North Carolina

Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act, 29 U.S.C. §§ 201-219, since § 143-422.1 et seq. is not "a law prohibiting discrimination in employment because of age," and the North Carolina Human Relations Council is not a "state authority established or authorized to grant or seek relief from such discriminatory practice," within the meaning of 29 U.S.C. § 633 (b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

§ 143-422.2. Legislative declaration.

Editor's Note. - For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

Quoted in Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

§ 143-422.3. Investigations; conciliations.

Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act. 29 U.S.C. §§ 201-219, since § 143-422.1 et

Plaintiff in Federal Age Discrimination Suit seq. is not "a law prohibiting discrimination in Need Not Seek Relief from Human Relations employment because of age," and the North Council as Jurisdictional Prerequisite. — Carolina Human Relations Council is not a Recourse by a plaintiff to the North Carolina "state authority established or authorized to grant or seek relief from such discriminatory practice," within the meaning of 29 U.S.C. § 633(b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

ARTICLE 51A.

Tax Study Commission.

§§ 143-433 to 143-433.5: Repealed by Session Laws 1979, c. 14, s. 1.

ARTICLE 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-437. Pesticide Board; functions. — The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(2) To carry out a program of planning, environmental and biological monitoring, and of investigation into long-range needs and problems concerning pesticides.

(1979, c. 448, s. 14.)

Editor's Note.

and biological monitoring" in subdivision (2). guage and subdivision (2) are set out.

As the rest of the section was not changed by The 1979 amendment inserted "environmental the amendment, only the introductory lan-

Part 2. Regulation of the Use of Pesticides.

§ 143-440. Restricted-use pesticides regulated.

(b) The Board may include in any such restricted-use regulation the time and conditions of sale, distribution, or use of such restricted-use pesticides; may prohibit the use of any restricted-use pesticide for designated purposes or at designated places or times; may require the purchaser or user to certify that restricted-use pesticides will be used only as labeled or as further restricted by regulations; may require the certification of private applicators; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted-use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted-use pesticides. The Board may authorize the use of restricted-use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. (1971, c. 832, s. 1; 1979, c. 448, s. 1.)

Editor's Note. — The 1979 amendment inserted "may require the certification of private applicators" in the first sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 143-442. Registration.

(g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale. Provided, however, this subsection shall not apply to any brand or grade of pesticide which the Board determines does not remain in channels of distribution due to method of sale by registrant directly to users thereof.

(i) The Board shall be empowered to set forth criteria for determining when a given product constitutes a different or separate brand or grade of pesticide. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2; 1979, c. 448, ss. 2,

3.)

Editor's Note. -

The 1979 amendment added the last sentence of subsection (g), and added subsection (i).

As the rest of the section was not changed by the amendment, only subsections (g) and (i) are set out.

Amendment Effective July 1, 1980. — Session Laws 1979, c. 830, s. 10, effective July 1, 1980, will rewrite subsection (h) to read as follows:

"(h) A pesticide may be registered by the Board for experimental use, including use to control wild animal or bird populations, even though the Wildlife Resources Commission may not have concurred in the declaration of the animal or bird population as pests under the terms of Article 22A of Chapter 113 of the General Statutes."

§ 143-443. Miscellanous prohibited acts.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.

(2a) For any person to use any pesticide in a manner inconsistent with its labeling, including, by way of illustration but not limitation, the use of a pesticide on a crop, animal, or site not permitted by the labeling. (1971,

c. 832, s. 1; 1975, c. 425, s. 3; 1979, c. 448, ss. 4, 5.)

Editor's Note. -

The 1979 amendment rewrote subdivision (b) (2a), which formerly read: "For any person to use any registered pesticide in a manner inconsistent with its labeling."

As the rest of the section was not changed by the amendment, only subsection (b) is set out. § 143-447. Emergency suspensions; seizures.

(b) It shall be the duty of the Board to issue and enforce a written or printed "stop sale, stop use, or removal" order to the owner or custodian of any lot of pesticide and for the owner or custodian to hold said lot at a designated place when the Board finds said pesticide is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said pesticide is released in writing by the Board or said violation has been otherwise legally disposed of by written authority. The Board shall release the pesticide so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. The registrant of a pesticide found deficient in active ingredients shall be subject to a penalty for the deficiency. The deficiency penalty shall be three times the percentage deficiency times the retail value of any product sold subsequent to sampling and prior to repossession, but not less than twenty-five dollars (\$25.00).

(1979, c. 448, s. 6.)

Editor's Note. - The 1979 amendment sampling and prior to repossession" for "as established by the consignee at the time of

sampling" in the last sentence of subsection (b). substituted "of any product sold subsequent to As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Part 3. Pesticide Dealers and Manufacturers.

§ 143-450. Employees of pesticide dealers; dealer's responsibility. -Every licensed pesticide dealer shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all persons employed by him who sell or recommend "restricted-use pesticides." (1979, c. 448, s. 7.)

deleted "with each application for an original or renewal license, and" preceding "at such," As the rest of the section was not changed by deleted "other" preceding "times as," and the amendment, only subsection (a) is set out.

Editor's Note. — The 1979 amendment inserted "or the Commissioner" in subsection (a).

As the rest of the section was not changed by

Part 4. Pesticide Applicators and Consultants.

§ 143-454. Solicitors, salesmen and operators; applicator's responsibility. -(a) Every licensed pesticide applicator shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all solicitors, salesmen, and operators employed by him. (1979, c. 448, s. 8.)

Editor's Note. — The 1979 amendment inserted "or the Commissioner" in subsection deleted "with each application for an original or (a). renewal license, and" preceding "at such,"

As the rest of the section was not changed by deleted "other" preceding "times as," and the amendment, only subsection (a) is set out.

Part 5. General Provisions.

§ 143-460. Definitions. — As used in this Article, unless the context otherwise requires:

(6) "Committee" means the Pesticide Advisory Committee.

(12) The term "fungus" means any non-chlorophyll-bearing thallophyte (that is any non-chlorophyll-bearing plant of a lower order than mosses and

liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(1979, c. 448, ss. 9, 10.)

Editor's Note. -

The 1979 amendment substituted "Pesticide Advisory Committee" for "Advisory Committee on Pesticides" in subdivision (6), and rewrote subdivision (12), which formerly read: "The term 'fungi' means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing

plants of a lower order than mosses and liverworts), for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals."

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (6) and (12) are set out.

§ 143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations.

(b) The following provisions shall apply to the public hearings required by

subsection (a) of this section:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Board proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the office of the Board in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the State, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Board

pursuant to the provisions of G.S. 143-464.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement with the Board in relation to any proposed action of the Board any time within 10 days following the conclusion of any public hearing or within any such additional time as the Board may allow by notice given as prescribed in this section.

(1979, c. 448, s. 11.)

Editor's Note. —
The 1979 amendment substituted "10" for "30" in the last sentence of subdivision (b)(3).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 143-464. Procedures with respect to registration of pesticides and certain

other matters; mailing list; seal; judicial review.

(c) The following provisions, together with any additional provisions not inconsistent herewith which the Board may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings:

are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to G.S. 143-442 whether called at the instance of the Board or of any person, shall be held upon not less than 20 days' written notice given by the Board to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Board or its authorized agent or agents, and the hearing shall be open to the public. The Board, or its authorized

agents, shall have the authority to administer oaths.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Board or by some 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 Board.

(4) The Board shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and

consent orders.

(5) Subpoenas or subpoenas duces tecum issued by the Board on its own behalf or on behalf of a party to the proceeding in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Board, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Board, as the case may be, at whose instance the hearing is being held.

(7) Without regard to subdivision (6) of this subsection, the burden of proof to justify the safety of any pesticide shall be upon the applicant for registration or for licenses or permits to use, apply or sell pesticides.

(8) No decision or order of the Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence

upon consideration of the whole record.

(9) Following any hearing, the Board shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Board proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(10) All orders and decisions of the Board shall set forth separately the Board'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 Board is based.
(11) The Board shall have the authority to adopt a seal which shall be the seal of said Board and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Board or its minutes may be certified by the chairman or secretary of the Board under his hand and the seal of the Board 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 or proceeding. The Board shall have the right to take judicial 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 Board or by any other person or interested party where material, relevant and competent.

(1979, c. 448, s. 12.)

substituted "20" for "30" in subdivision (c)(1). the amendment, only subsection (c) is set out.

Editor's Note. - The 1979 amendment As the rest of the section was not changed by

§ 143-470.1. Report of minor violations in discretion of Board or Commissioner. — Nothing in this Article shall be construed to require the Board or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Board or Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1979, c. 448, s. 13.)

ARTICLE 55.

The Southern Growth Policies Agreement.

§ 143-496. Article VI. Internal Management of the Board. (b) To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed 23 members, including at least one member from each party state. The Executive Committee, subject to the provisions of this Agreement and consistent with the policies of the Board, shall be constituted and function as provided in the bylaws of the Board. One half of the membership of the Executive Committee shall consist of governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive Committee, the number of governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of two years, except that members elected to the first Executive Committee shall be elected as follows: One less than half of the membership for two years and the remainder for one year. The Chairman, Chairman-Elect, Vice-Chairman and Treasurer of the Board shall be members of the Executive Committee and envitained in this paragraph to the contraction of the executive committee and envitained in this paragraph to the contraction of the executive committee and envitained in this paragraph to the contraction of the executive committee and envitained in this paragraph to the contraction of the executive committee and envitained in this paragraph to the contraction of the executive committee and envitained in this paragraph to the contraction of the executive contraction of the Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(1979, c. 35, s. 1.)

Editor's Note. — The 1979 amendment substituted "23" for "17" in the first sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 143-502. Article XII. Eligible Parties; Entry into and Withdrawal. — (a) This Agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the Territory of the Virgin Islands, hereinafter referred to as party states. (1979. c. 35, s. 2.)

Editor's Note. — The 1979 amendment deleted "and" preceding "West Virginia" in subsection (a), and added "the Commonwealth of Puerto Rico, and the Territory of the Virgin The Astherest of the section was not changed by the amendment, only subsection (a) is set out.

§§ 143-506.1 to 143-506.5: Reserved for future codification purposes.

ARTICLE 55A.

Balanced Growth Policy Act.

§ 143-506.6. Title. — This Article shall be known as the North Carolina Balanced Growth Policy Act. (1979, c. 412, s. 1.)

Editor's Note. — Session Laws 1979, c. 412, s. 11, contains a severability clause.

- § 143-506.7. Purposes. The purposes of this act are to declare as a policy that the State of North Carolina shall encourage economic progress and job opportunities throughout the State; support growth trends which are favorable to maintain a dispersed population, to maintain a healthy and pleasant environment and to preserve the natural resources of the State. (1979, c. 412, s. 2.)
- § 143.506.8. Declaration of State Balanced Growth Policy. The General Assembly of North Carolina recognizes the importance of reaching a higher standard of living throughout North Carolina by maintaining a balance of people, jobs, public services and the environment, supported by the growing network of small and large cities in the State. The General Assembly of North Carolina, in order to assure that opportunities for a higher standard of living are available all across the State, declares that it shall be the policy of the State to bring more and better jobs to where people live; to encourage the development of adequate public services on an equitable basis for all of the State's people at an efficient cost; and to maintain the State's natural environmental heritage while accommodating urban and agricultural growth. (1979, c. 412, s. 3.)
- § 143-506.9. Cooperation of agencies. The General Assembly encourages, to the fullest extent possible, all State agencies to review their existing policies, procedures and regulations to bring them into conformity with the provisions of this Balanced Growth Policy. (1979, c. 412, s. 4.)
- § 143-506.10. Designation of growth centers; achieving Balanced Growth. — It shall be the policy of the State of North Carolina to support the expansion of the State and to designate growth areas or centers with the potential, capacity and desire for growth. The Governor, with the advice of county and municipal government officials and citizens, is charged with designating growth areas or centers, which shall include at least one center of the carolina of the content of the carolina of the content of the con Designation of growth areas or centers shall be reviewed annually. These designations may be used for the purpose of establishing priority consideration for State and federal assistance for growth.

Progress toward achieving balanced growth shall be measured by the strengthening of economic activity and the adequacy of public services within each of the State's multi-county regions and, as to the geographical area included, the Southeastern Economic Development Commission. The Governor, with the advice of county and municipal government officials and citizens, shall develop measures of progress toward achieving balanced growth. (1979, c. 412,

s. 5.)

§ 143-506.11. Citizen participation. — The Governor shall establish a process of citizen participation that assures the expression of needs and aspirations of North Carolina's citizens in regard to the purposes of this act. (1979, c. 412, s. 6.)

§ 143-506.12. Policy areas. — The following program area guidelines shall

become the policy for the State of North Carolina:

(1) To encourage diversified job growth in different areas of the State, with particular attention to those groups which have suffered from high rates of unemployment or underemployment, so that sufficient work opportunities at high wage levels can exist where people live;

(2) To encourage the development of transportation systems that link growth areas or centers together with appropriate levels of service;

(3) To encourage full support for the expansion of family-owned and operated units in agriculture, forestry and the seafood industry as the basis for increasing productive capacity;

(4) To encourage the development and use of the State's natural resources wisely in support of Balanced Growth Policy while fulfilling the State's constitutional obligation to protect and preserve its natural heritage;

(5) To promote the concept that a full range of human development services shall be available and accessible to persons in all areas of the State;(6) To encourage the continued expansion of early childhood, elementary,

secondary and higher education opportunities so that they are improving in both quality and availability;

(7) To encourage excellent technical training for North Carolina workers that prepares them to acquire and hold high-skill jobs and that encourages industries which employ high-skill workers to locate in the State;

(8) To encourage the availability of cultural opportunities to people where they live;

(9) To encourage the expansion of local government capacity for managing

growth consistent with this Balanced Growth Policy; and
(10) To encourage conservation of existing energy resources and provide
for the development of an adequate and reliable energy supply, while
protecting the environment. (1979, c. 412, s. 7.)

- § 143-506.13. Implementation of a State-local partnership. The Governor, with the advice of the State Goals and Policy Board, shall establish a statewide policy-setting process for Balanced Growth, in partnership with local government, that brings about full participation of both the State and local government. The purpose of this State-local partnership is to arrive at joint strategies and objectives for balanced statewide development and ensure consistent action by the State and local government for jointly agreed upon strategies and objectives. (1979, c. 412, s. 8.)
- § 143-506.14. North Carolina Office of Local Government Advocacy created; membership; terms; meetings; compensation; powers and duties; staff; cooperation by departments. There is established in the office of the Government Advocacy The Local Government Advocacy The Local Government Advocacy Council, created by Executive Order Number 22, is hereby transferred to the Office of Local Government Advocacy. The Council shall consist of 19 persons and shall be composed as follows: six members representing county government, five of whom are the members of the Executive Committee of the North Carolina Association of County Commissioners and one who is the Executive Director of the Association; six members representing municipal government, five of whom are the members of

the Executive Committee of the North Carolina League of Municipalities and one who is the Executive Director of the League; two Senators appointed by the President of the Senate; two members of the House of Representatives, appointed by the Speaker of the House of Representatives and three at-large members appointed by the Governor. The Association of County Commissioners and the League of Municipalities representatives shall serve terms on the Council consistent with their terms as Executive Committee members appointed by the Governor. The members appointed by the President of the Senate and the Speaker of the House of Representatives shall serve until January 15, 1981, or until their successors are appointed, whichever is later. Their successors shall serve a term of two years. The at-large members shall serve at the pleasure of the Governor for a period of two years. The Chairman and Vice-Chairman shall be the President of the Association of County Commissioners and the President of the League of Municipalities respectively, with the office rotating between the League and Association annually. Provided that no person among those appointed by the Governor, the President of the Senate and the Speaker of the House of Representatives shall serve on the Council for more than two complete consecutive terms.

The Council shall meet at least once each quarter and may hold special meetings at any time at the call of the Chairman or the Governor.

The members of the Council shall receive per diem and necessary travel and

subsistence expenses in accordance with the provisions of G.S. 138-5.

Membership. The Local Government Advocacy Council shall not be considered a public office and, to that end membership may be held in addition to the number of offices authorized by G.S. 128-1.1.

The general duties and responsibilities of the Council are:
(1) To advocate on behalf of local government and to advise the Governor and his Cabinet on the development and implementation of policies and programs which directly affect local government;
(2) To function as liaison for State and local relations and communications;

(3) To identify problem areas and recommend policies with respect to State,

regional and local relations; and

(4) To review, monitor and evaluate current and proposed State program policies, practices, procedures, guidelines and regulations with respect to their effect on local government.

The Office of Local Government Advocacy shall be staffed by persons knowledgeable of local government who shall seek to carry out the directives of

the Local Government Advocacy Council by:

(1) Advocating the policies of the Council with various State departments; (2) Serving as a communications liaison between the Local Government Advocacy Council and the various State departments; and

(3) Functioning as an ombudsman for the resolution of local government

problems.

It shall be the responsibility of each respective Cabinet department head to: (i) insure that departmental employees make every effort to cooperate with and provide support to the Local Government Advocacy Council in keeping with the intent of this act; and (ii) advise the Local Government Advocacy Council of their proposed policies and plans for review in terms of their effect on local government. (1979, c. 412, s. 9)

ARTICLE 57.

Crime Study Commission.

\$\frac{143-521}{2}\$ to 143-526: Repealed by Session Laws 1979, c. 504, s. 3.

ARTICLE 58.

Committee on Inaugural Ceremonies.

§§ 143-540 to 143-544: Reserved for future codification purposes.

ARTICLE 59. Vocational Rehabilitation Services.

§ 143-545. Acceptance of federal aid. — The State of North Carolina accepts all of the provisions and benefits of the Rehabilitation Act of 1973 (Public Law 93-112) as amended, an act passed by the Congress of the United States to assist states in providing vocational rehabilitation services to physically and mentally disabled persons with the goal of preparing these persons for gainful employment. (1979, c. 420, s. 2.)

§ 143-546. Designated State agency. — (a) The Department of Human Resources is authorized:

(1) To cooperate with the Federal Rehabilitation Services Administration or its successor agency in the administration of the Rehabilitation Act of 1973 (Public Law 93-112) as amended;

(2) To administer any legislation concerning vocational rehabilitation enacted by the State of North Carolina through an approved State Plan;

(3) To formulate a program of vocational rehabilitation services through its organizational unit;

(4) To fix compensation, subject to the approval of the State Personnel Commission, as may be necessary to administer this program and to pay such compensation and other expenses as are necessary from funds appropriated under this law.

(b) The Department of Human Resources, in order to carry out the provisions of this Article, shall secure the cooperation of federal, State, and local agencies, organizations, and individuals having contact with the physically and mentally disabled population. (1979, c. 420, s. 2.)

§§ 143-547 to 143-551: Reserved for future codification purposes.

ARTICLE 60.

State and Certain Local Educational Entity Employees, Nonsalaried Public Officials, and Legislators Required to Repay Money Owed to State.

Part 1. State and Local Educational Entity Employees.

§ 143-552. Definitions. — As used in this Part: (1) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General

Statutes; or

c. Any board of trustees of a community college or technical institute under Chapter 115A of the General Statutes.

(2) "Employee" means any person who is appointed to or hired and employed by an employing entity under this Part and whose salary is paid in whole or in

part by State funds.
(3) "Net disposable earnings" means the salary paid to an employee by an employing entity after deduction of withholdings for taxes, social security, State retirement or any other sum obligated by law to be withheld. (1979, c. 864, s. 1.)

§ 143-553. Conditional continuing employment; notification among employing entities; repayment election. — (a) All persons employed by an employing entity as defined by this Part who owe money to the State and whose salaries are paid in whole or in part by State funds must make full restitution

of the amount owed as a condition of continuing employment.

(b) Whenever a representative of any employing entity as defined by this Part has knowledge that an employee owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the employing entity. Upon receipt of notification an employing entity shall terminate the employee's employment if after written notice of his right to do so he does not repay the money within a reasonable period of time; provided, however, that where there is a genuine dispute as to whether the money is owed or how much is owed, or there is an unresolved issue concerning insurance coverage, the employee shall not be dismissed as long as he is pursuing administrative or judicial remedies to

have the dispute or the issue resolved.

- (c) An employee of any employing entity who has elected in writing to allow not less than ten percent (10%) of his net disposable earnings to be periodically withheld for application towards a debt to the State shall be deemed to be repaying the money within a reasonable period of time and shall not have his employment terminated so long as he is consenting to repayment according to such terms. Furthermore, the employing entity shall allow the employee who for some extraordinary reason is incapable of repaying the obligation to the State according to the preceding terms to continue employment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the employee's employment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)
- § 143-554. Right of employee appeal. (a) Any employee or former employee of an employing entity within the meaning of G.S. 143-552(1)a whose employment is terminated pursuant to the provisions of this Part shall be given the opportunity to appeal the employment termination to the State Personnel Commission according to the normal appeal and hearing procedures provided by Chapter 126 and the State Personnel Commission rules adopted pursuant to the

authority of that Chapter; however, nothing herein shall be construed to give the right to termination reviews to anyone exempt from that right under G.S. 126-5.

(b) Before the employment of an employee of a local board of education within the meaning of G.S. 143-552(1)b who is either a superintendent, supervisor, principal, teacher or other professional person is terminated pursuant to this Part, the local board of education shall comply with provisions of G.S. 115-142. If an employee within the meaning of G.S. 143-552(1)b is other than one whose termination is made reviewable pursuant to G.S. 115-142, he shall be given the opportunity for a hearing before the local board of education prior to the termination of his employment.

(c) Before the employment of an employee of a board of trustees of a community college or technical institute within the meaning of G.S. 143-552(1)c is finally terminated pursuant to this Part, he shall be given the opportunity for

a hearing before the board of trustees. (1979, c. 864, s. 1.)

Part 2. Public Officials.

§ 143-555. Definitions. — As used in this Part:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other State person or group of State persons authorized by law to appoint to a public office.

(2) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General Statutes; or

c. Any board of trustees of a community college or technical institute

under Chapter 115A of the General Statutes.

(3) "Public office" means appointive membership on any State commission. council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges and technical institutes created pursuant to G.S. 115A-7, and any other State agency created by law; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions.

(4) "Public official" means any person who is a member of any public office

as defined by this Part. (1979, c. 864, s. 1.)

Editor's Note. — Chapter 115A, including present statute as to boards of trustees of \$115A-7, referred to in this section, was repealed by Session Laws 1979, c. 462. For \$115D-12.

§ 143-556. Notification of the appointing authority; investigation. Whenever a representative of an employing entity as defined by this Part has knowledge that a public official owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the appointing authority who appointed the public official in question. Upon receipt of notification the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount. (1979, c. 864, s. 1.)

§ 143-557. Conditional continuing appointment; repayment election. — If after investigation under the terms of this Part an appointing authority determines the existence of a delinquent monetary obligation owed to the State by a public official, he shall notify the public official that his appointment will be terminated 60 days from the date of notification unless repayment in full is made within that period. Upon determination that any public official has not made repayment in full after the expiration of the time prescribed by this section, the appointing authority shall terminate the appointment of the public official; provided however, the appointing authority shall allow the public official who for some extraordinary reason is incapable of repaying the obligation according to the preceding terms to continue his appointment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the public official's appointment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

Part 3. Legislators.

- § 143-558. Definition of employing entity. For the purposes of this Part "employing entity" shall have the same meaning as provided in G.S. 143-552(1) and 143-555(2). (1979, c. 864, s. 1.)
- § 143-559. Notification to the Legislative Ethics Committee; investigation. Whenever a representative of any employing entity as defined by this Part has knowledge that a legislator owes money to the State and is delinquent in satisfying this obligation, this information shall be reported to the Legislative Ethics Committee established pursuant to Chapter 120, Article 14 of the General Statutes for disposition. (1979, c. 864, s. 1.)
 - Part 4. Confidentiality Exemption, Preservation of Federal Funds, and Limitation of Actions.
- § 143-560. Confidentiality exemption. Notwithstanding the provisions of any law of this State making confidential the contents of any records or prohibiting the release or disclosure of any information, all information exchange among the employing entities defined under this Article necessary to accomplish and effectuate the intent of this Article is lawful. (1979, c. 864, s. 1.)
- § 143-561. Preservation of federal funds. Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made. (1979, c. 864, s. 1.)
- § 143-562. Applicability of a statute of limitations. Payments on obligations to the State collected under the procedures established by this Article shall not be construed to revive obligations or any part thereof already barred by an applicable statute of limitations. Furthermore, payments made as a result of collection procedures established by the terms of this Article shall not be construed to extend an applicable statute of limitations. (1979, c. 864, s. 1.)

Sec.

Chapter 143A.

State Government Reorganization.

Article 1.

General Provisions.

Department of State Treasurer.

143A-17. Plans and reports.

Article 3.

Department of State Auditor.

143A-28. [Repealed.]

143A-38.1. The Law-Enforcement Benefit and Retirement Fund: transfer.

General Provisions.

§ 143A-6. Types of transfers.

Subsection (b) and former § 122-1.1 can be reconciled and subsection (b) does not overrule § 122-1.1. Subsection (b) leaves in the State Board of Mental Health all its statutory powers, but provides management functions, including hiring and discharging personnel,

shall be done under the supervision of the secretary of the department. Because the secretary supervises the board in the performance of its duties does not mean the secretary assumes those duties. Smith v. State, 36 N.C. App. 307, 244 S.E.2d 161 (1978).

§ 143A-17. Plans and reports. — Each principal department shall submit an annual plan of work to the Governor and the Advisory Budget Commission prior to the beginning of each fiscal year. Each department which plans to include in its budget request for the ensuing fiscal period a request for (i) the establishment of a new program regardless of the source of the supporting funds, or (ii) the State funding of a program which was previously supported from nonstate sources, shall provide in its annual plan of work measurement criteria for the determination of the success or failure of each such program requested. Each principal department shall submit an annual report covering programs and activities to the Governor and Advisory Budget Commission at the end of each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal department of the State government to be submitted to the Governor, Advisory Budget Commission, and to the appropriations committees of the General Assembly for consideration and approval. (1971, c. 864, s. 21; 1977, 2nd Sess., c. 1219, s. 44.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added the second sentence, inserted "the" preceding "State" in the last sentence and inserted "the contains a severability class. appropriations committees of" near the end of

the last sentence (formerly the second

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

ARTICLE 3.

Department of State Auditor.

§ 143A-28: Repealed by Session Laws 1977, 2nd Sess., c. 1204, s. 2, effective July 1, 1978.

ARTICLE 4.

Department of State Treasurer.

§ 143A-38.1. The Law-Enforcement Officers' Benefit and Retirement Fund; transfer. — The Law-Enforcement Officers' Benefit and Retirement Fund, as contained in Article 12 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1977, 2nd Sess., c. 1204, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1204, s. 4, makes the act effective Jan. 1. 1978.

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Sec.

143B-10. Powers and duties of heads of principal departments.

Article 2.

Department of Cultural Resources.

Part 4. North Carolina Historical Commission.

143B-62. North Carolina Historical Commission — creation, powers and duties.

Part 7. Tryon Palace Commission.

143B-72. Tryon Palace Commission — members; selection; quorum; compensation.

Part 9. Sir Walter Raleigh Commission. 143B-75 to 143B-78. [Repealed.]

Part 11. American Revolution Bicentennial Committee.

143B-81 to 143B-83. [Repealed.]

Part 19. Edenton Historical Commission.

143B-95. Edenton Historical Commission — creation, purposes, and powers.

143B-98. Edenton Historical Commission — members; selection; compensation; quorum.

Article 3.

Department of Human Resources.

Part 1. General Provisions.

143B-140. Department of Human Resources — organization.

Part 2. Board of Human Resources.

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ARTICLE 1.

General Provisions.

§ 143B-10. Powers and duties of heads of principal departments.

(d) The head of each principal department may create and appoint committees or councils to consult with and advise the department. Except as required by State or federal law, such committees or councils shall consist of no more than 10 members unless the approval of the Advisory Budget Commission is obtained to exceed that number. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved in advance by the Advisory Budget Commission. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid

from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations

by March 31 of each year.

(1977, 2nd Sess., c. 1219, s. 46.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, in the first paragraph of subsection (d), added the second and fourth sentences and inserted "in advance" near the end of the third sentence. The amendment also added the second paragraph of subsection (d).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

ARTICLE 2.

Department of Cultural Resources.

Part 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers and duties. - There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

(2) The Historical Commission shall have the power and duty to establish

standards and provide rules and regulations as follows:

a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina State Archives or the North Carolina Museum of History;

b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina; and

- c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina:
 - d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina:

e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State;
f. For the extention of State aid or appropriations to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration; and

f1. For the extension of State aid or appropriations to nonstate-owned

nonprofit history museums.

g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

(1979, c. 861, s. 6.)

Editor's Note. -The 1979 amendment, effective July 1, 1979, added paragraph f1 to subdivision (2).

As only subdivision (2) was changed by the amendment, the rest of the section is not set out.

Part 6. Public Librarian Certification Commission.

Repeal of Part. — Session Laws 1979, c. 629, amended Session repealed. Laws 1977, c. 712, s. 2 (§ 143-34.11), so as to

delete this Part from the list of statutes

Part 7. Tryon Palace Commission.

§ 143B-72. Tryon Palace Commission — members; selection; quorum; compensation. — The Tryon Palace Commission of the Department of Cultural Resources shall consist of 25 members appointed by the Governor and in addition to the members who are appointed by the Governor, the Attorney General, the Secretary of Cultural Resources or his designee, the mayor of the City of New Bern, and the chairman of the Board of Commissioners of Craven County shall serve as ex officio members of said Commission. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Tryon Palace Commission.

A majority of the members of the Commission shall constitute a quorum for

the transaction of business.

The members of the Commission shall serve without pay and without expense allowance. (1973, c. 476, s. 55; 1977, c. 771, s. 4; 1979, c. 151, s. 1.)

Editor's Note. The 1979 amendment substituted "Cultural Resources" for "Natural Resources and Community Development" in the first sentence of the first paragraph.

Part 9. Sir Walter Raleigh Commission.

§§ 143B-75 to 143B-78: Repealed by Session Laws 1979, c. 504, s. 1.

Part 11. American Revolution Bicentennial Committee.

§§ 143B-81 to 143B-83: Repealed by Session Laws 1979, c. 504, s. 2.

Editor's Note. — Session Laws 1979, c. 504, s. 2, reads as follows:

"Sec. 2. Abolition of the American Revolution Bicentennial Committee. (a) G.S. 143B-81, G.S. 143B-82 and G.S. 143B-83 as the same appear in 1978 Replacement Volume 3C of the General Statutes of North Carolina are hereby repealed.

"(b) The American Revolution Bicentennial Committee of the Department of Cultural Resources is hereby abolished."

It appears that the repeal of § 143B-83 may

have been inadvertent.

Part 19. Edenton Historical Commission.

§ 143B-95. Edenton Historical Commission — creation, purposes, and powers. — There is hereby recreated the Edenton Historical Commission. The purposes of the Commission are to effect and encourage preservation, restoration, and appropriate presentation of the Town of Edenton and Chowan County, as a historic, educational, and aesthetic place, to the benefit of the citizens of the place and the State and of visitors. To accomplish its purposes, the Commission has the following powers and responsibilities:

(1) To acquire, hold, and dispose of title to or interests in historic properties in the Town of Edenton and County of Chowan and to repair, restore,

and otherwise improve the properties, and to maintain them;

(2) To acquire, hold, and dispose of title to or interests in other land there, upon which historic structures have been or shall be relocated, and to improve the land and maintain it;

(3) To acquire, hold, and dispose of suitable furnishings for the historic properties, and to provide and maintain suitable gardens for them;(4) To develop and maintain one or more collections of historic objects and

(4) To develop and maintain one or more collections of historic objects and things pertinent to the history of the town and county, to acquire, hold, and dispose of the items, and to preserve and display them;

(5) To develop and conduct appropriate programs, under the name "Historic Edenton" or otherwise, for the convenient presentation and interpretation of the properties and collections to citizens and visitors, as places and things of historic, educational, and aesthetic value;

(6) To conduct programs for the fostering of research, for the encouragement of preservation, and for the increase of knowledge available to the local citizens and the visitors in matters pertaining to the history of the town and county;

the history of the town and county;
(7) To cooperate with the Secretary and Department of Cultural Resources and with appropriate associations, governments, governmental agencies, persons, and other entities, and to assist and advise them, toward the furtherance of the Commission's purposes;

(8) To solicit gifts and grants toward the furtherance of these purposes and

the exercise of these powers;

(9) To conduct other programs and do other things appropriate and reasonably necessary to the accomplishment of the purposes and the exercise of the powers; and

(10) To adopt and enforce any bylaws and rules that the Commission deems beneficial and proper. (1973, c. 476, s. 90; 1979, c. 733, s. 1.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 143B-98. Edenton Historical Commission — members; selection; compensation; quorum. — The Edenton Historical Commission shall consist of 33 members, 18 appointed by the Governor to serve at his pleasure, 12 elected by the Commission from time to time according to the procedure it adopts, and, ex officio, the Mayor of the Town of Edenton, the Chairman of the Board of Commissioners of Chowan County, and the Secretary of Cultural Resources or his designee.

All the present members of the Commission may continue to serve, at the pleasure of the Governor, until the end of his present term of office. The Commission shall elect its own officers, and the members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 93;

1979, c. 733, s. 2.)

Editor's Note. — The 1979 amendment rewrote this section.

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-140. Department of Human Resources — organization. — The Department of Human Resources shall be organized initially to include the Board of Human Resources, the Commission for Health Services, the Commission for Mental Health and Mental Retardation Services, the Eugenics Commission, the Commission for the Blind, the Professional Advisory Committee, the Blind Advisory Committee, the Social Services Commission, the Commission for Medical Facility Services and Licensure, the Council for Institutional Boards, the Council on Developmental Disabilities, the Governor's Coordinating Council on Aging, the Governor's Council on Employment of the Handicapped, the Governor's Advocacy Council on Children and Youth, the Mental Health Council, the Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis, the Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina, the Board of Directors of the North Carolina Orthopedic Hospital, the Board of Directors of the Governor Morehead School, the Board of Directors of the North Carolina Schools for the Deaf, the Board of Directors for the Confederate Women's Home, the Division of Health Services, the Division of Mental Health, Mental Retardation, and Substance Abuse Services, the Division of Blind Services, the Division of Facility Services and Licensure, the Division of Institutional Services, the Division of Facility Services and Licensure, the Division of Institutional Services, the Division of Aging, and such other divisions as may be established under the provisions of this Chapter. (1973, c. 476, s. 121; 1975, c. 90; 1977, c. 242, s. 3; c. 679, ss. 5-8; 1979, c. 358, s. 27.)

Editor's Note. -

substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for

"Division of Mental Health and Mental The 1979 amendment, effective July 1, 1979, Retardation Services" near the end of the section.

Part 2. Board of Human Resources.

§ 143B-142. Commission for Health Services — creation, powers and duties.

(2) The Commission for Health Services shall have the power and duty to

establish standards and adopt rules and regulations:

a. For the operation of home health agencies as provided by law; b. Regulating sanitary conditions of establishments providing food and lodging as provided by Article 5 of Chapter 72 of the General Statutes of the State of North Carolina;

c. Preparing design standards to be used as a guide in approving sewage-treatment devices and holding tanks for marine toilets as

provided by G.S. 75A-6(o);

d. Relating to the use, storage, transportation, and disposal of radiation, radiation machines, and radioactive materials as provided by Chapter 104C of the General Statutes of the State of North Carolina;

e. Adopting minimum health and sanitation standards for day-care facilities as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina;

f. Establishing specifications for sanitary privies for schools where water-carried sewerage facilities are unavailable as provided by G.S. 115-132:

g. Governing the sanitation of local confinement facilities as provided

by G.S. 153-53.4;

h. Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provision of the Clean Water Bond Bill; i. Repealed by Session Laws 1975, c. 694, s. 6.

j. For the operation of nursing homes as defined in G.S. 130-9(e). k. Regulating vectors of public health significance or of disease

carrying potential.

(1979, c. 41, s. 1.)

Editor's Note. —

subdivision (2).

Section 153-53.4, referred to in this section, was repealed by Session Laws 1973, c. 822. See now § 153A-221.

As the rest of the section was not The 1979 amendment added paragraph k of changed by the amendment, only subdivision (2) is set out.

Part 4. Commission for Mental Health and Mental Retardation Services.

§ 143B-147. Commission for Mental Health and Mental Retardation Services — creation, powers and duties.

Editor's Note. -

For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

Part 6. Social Services Commission.

8 143B-153. Social Services Commission — creation, powers and duties. — There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(2) The Social Services Commission shall have the power and duty to

establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108 of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108-23(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care; and

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for

needy and homeless children as provided by G.S. 108-66.

(1977, 2nd Sess., c. 1219, ss. 26, 27.)

Editor's Note. -

The 1977, 2nd Sess., amendment, effective July 1, 1978, added the second sentence of the introductory paragraph and added "with the exception of the program of medical assistance established by G.S. 108-23(b)" at the end of

paragraph (a) of subdivision (2).

Session Laws 1977, 2nd Sess., c. 1219, s. 28, provides: "All standards, rules, regulations, determinations, and decisions relating to medical assistance and the medical assistance program adopted before July 1, 1978, by the Social Services Commission and its predecessors shall remain in full force and effect unless and until repealed or superseded by action of the Department of Human Resources."

Session Laws 1977, 2nd Sess., c. 1219, s. 57,

contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (2) are set out.

State Liable for Negligence of County Social Services Director. — In an action alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services, the Department of Human Resources would be liable for the negligent acts of its agents, the Durham County Director of Social Services and his subordinates, since the Department of Human Resources, through the Social Services Commission, has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Part 8. Professional Advisory Committee.

§ 143B-162. Professional Advisory Committee — members; selection; quorum; compensation. — The Professional Advisory Committee of the Department of Human Resources shall consist of nine members appointed by the Governor, three of whom shall be licensed physicians nominated by the North Carolina Medical Society whose practice is limited to ophthalmology, three optometrists nominated by the North Carolina State Optometric Society, and three opticians nominated by the North Carolina Opticians Association.

Those nine members shall serve three year terms staggered such that the terms of three members shall expire each year. A member of the Committee

shall continue to serve until his successor is appointed and qualifies. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive

Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as

chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of

All clerical and other services required by the Committee shall be supplied by

the Secretary of Human Resources.

The schedule for appointments to the Committee described in Section 1 of this act is as follows: The ophthalmologists and optometrists serving on the Committee on the date this act is ratified shall continue to serve until their respective terms expire. Initial appointments of the three opticians shall be made no later than July 2, 1979, shall become effective on that date, and shall be for one, two, and three year terms, respectively. At the end of the respective terms of office of those nine members, the appointment of their successors shall be for terms of three years. (1973, c. 476, s. 145; 1979, c. 977, ss. 1, 2.)

Editor's Note. - The 1979 amendment, in the first paragraph, increased the number of Committee members from six to nine, shifted the words "nominated by the North Carolina Medical Society" to their present location from their former location after "ophthalmology," deleted "and" before "three optometrists," and added the provision for three optician members. In the second paragraph, the amendment substituted the present first and second sentences for a former first sentence specifying the terms of the initial Committee members, and a former second sentence providing for the appointment of successor members.

Session Laws 1979, c. 977, s. 2, provides: "The schedule for appointments to the Committee described in Section 1 of this act is as follows: The ophthalmologists and optometrists serving on the Committee on the date this act is ratified shall continue to serve until their respective terms expire. Initial appointments of the three opticians shall be made no later than July 2, 1979, shall become effective on that date, and shall be for one, two, and three year terms, respectively. At the end of the respective terms of office of those nine members, the appointment of their successors shall be for terms of three years."

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind creation, powers and duties. — (a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources. This committee shall make a continuing study of the entire range of problems and needs of the blind and visually impaired population of this State and make specific recommendations to the Secretary of Human Resources as to how these may be solved or alleviated through legislative action. The committee shall examine national trends and programs of other states, as well as programs and priorities in North Carolina. Because of the cost of treating persons who lose their vision, the committee's role shall also include studying and making recommendations to the Secretary of Human Resources concerning methods of preventing blindness and restoring vision. (1979, c. 973, s. 1.)

the second, third, and fourth sentences of subsection (a).

Editor's Note. — The 1979 amendment added As only subsection (a) was changed by the amendment, the rest of the section is not set out.

§ 143B-164. Consumer and Advocacy Advisory Committee for the Blind members; selection; quorum; compensation. — (a) The Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources shall consist of the following members:

(1) One member of the North Carolina Senate to be appointed by the

Lieutenant Governor;
(2) One member of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
(3) President and Vice-President of the National Federation of the Blind of

North Carolina:

(4) President and Vice-President of the North Carolina Council of the Blind; (5) President and Vice-President of the North Carolina Association of Workers for the Blind;

(6) President and Vice-President of the North Carolina Chapter of the

American Association of Workers for the Blind;

(7) Chairman of the State Council of the North Carolina Lions and Executive Director of the North Carolina Lions Association for the Blind, Inc.;

(8) Chairman of the Concession Stand Committee of the Division of Services for the Blind of the Department of Human Resources; and

(9) Executive Director of the North Carolina Society for the Prevention of

Blindness, Inc.

With respect to members appointed from the General Assembly, these appointments shall be made in the odd-numbered years, and the appointments shall be made for two-year terms beginning on the first day of July and continuing through the 30th day of June two years thereafter; provided, such appointments shall be made within two weeks after ratification of this act, and the first members which may be so appointed prior to July 1 of the year of ratification shall serve through the 30th day of June of the second year thereafter. If any committee member appointed from the General Assembly ceases to be a member of the General Assembly, for whatever reason, his position on the committee shall be deemed vacant. In the event that either committee position which is designated herein to be filled by a member of the General Assembly becomes vacant during a term, for whatever reason, a successor to fill that position shall be appointed for the remainder of the unexpired term by the person who made the original appointment or his successor. Provided members appointed by the Lieutenant Governor and the Speaker of the House shall not serve more than two complete consecutive terms.

With respect to the remaining committee members, each officeholder shall serve on the committee only so long as he holds the named position in the specified organization. Upon completion of his term, failure to secure reelection or appointment, or resignation, the individual shall be deemed to have resigned from the committee and his successor in office shall immediately become a member of the committee. Further, if any of the above-named organizations dissolve or if any of the above-stated positions no longer exist, then the successor organization or position shall be deemed to be substituted in the place of the former one and the office holder in the new organization or of the new position

shall become a member of the committee.

(1979, c. 973, s. 2.)

Editor's Note. - The 1979 amendment, in subsection (a), added subdivisions (1) and (2), redesignated subdivisions (1) through (7) and

subdivisions (3) through (9), added the present second paragraph, combined the former second and third paragraphs into the present third

remaining committee members" for "Provided" paragraph. at the beginning of the first sentence of the present third paragraph, and deleted "Provided"

paragraph, substituted "With respect to the at the beginning of the third sentence of that

As only subsection (a) was changed by the amendment, the rest of the section is not set out.

Part 11. Council for Institutional Boards.

§§ 143B-169 to 143B-172: Repealed by Session Laws 1979, c. 504, s. 9.

Part 12. Boards of Directors of Institutions.

§ 143B-173. Boards of directors of institutions — creation, powers and duties. - (a) There are hereby created the following boards of directors of institutions:

(1) The Board of Directors of the North Carolina Specialty Hospitals; A sunset date of July 1, 1980, is placed on the Board of Directors of the North Carolina Specialty Hospitals. The Board shall be subject to review by the Governmental Evaluation Commission under the provisions of Sections 7, 8, 9, 10 and 11 of Chapter 712 of the 1977 Session Laws.

(2) The Board of Directors of the North Carolina Orthopedic Hospital; (3) The Board of Directors of the Lenox Baker Children's Hospital;

(4) The Board of Directors of the Governor Morehead School;

(5) The Board of Directors of the North Carolina Schools for the Deaf; and

(6) The Board of Directors of the Confederate Women's Home with the power and duty to adopt rules and regulations to be followed in the conduct of their respective institutions.

(1979, c. 838, s. 43.)

Editor's Note. -

The 1979 amendment, effective July 1, 1979, added the sunset date provision to subdivision (1) of subsection (a).

Session Laws 1979, c. 838, s. 122, contains a severability clause.

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

§ 143B-174. Boards of directors of institutions — members; selection; quorum; compensation.

Amendment Conditionally Effective July 1, 1980. - Session Laws 1979, c. 838, s. 44, provides: "If the Board of Directors of the North Carolina Specialty Hospitals is not reestablished under the provisions of Chapter 712 of the 1977 Session Laws, then effective July 1, 1980, G.S. 143B-174 is amended by deleting the first sentence which reads: 'The Board of Directors of the North Carolina Specialty Hospitals of the

Department of Human Resources shall consist of 12 members appointed by the Governor for terms of six years,' and by deleting the words in the seventh sentence: 'the Board of Directors of North Carolina Specialty Hospitals, four of whose appointments expire April 29, 1973, four of whose appointments expire April 29, 1975, and four of whose appointments expire April 29, 1977.''

Part 13. Council on Developmental Disabilities.

§ 143B-178. Council on Developmental Disabilities — definitions. following definitions apply to this Chapter:

(1) The term "developmental disability" means a severe, chronic disability

of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22;

c. Is likely to continue indefinitely;
d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually

planned and coordinated.

(1979, c. 752, s. 1.)

Editor's Note. As subdivision (2) was not changed by the The 1979 amendment rewrote subdivision (1). amendment, it is not set out.

§ 143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation. — The Council on Developmental Disabilities of the Department of Human Resources shall consist of 32 members appointed by the

Governor. The composition of the Council shall be as follows:

(1) Eleven members from the General Assembly and State government agencies as follows: One person who is a member of the Senate, one person who is a member of the House of Representatives, one representative of the Department of Public Instruction, one representative of the Department of Correction, and seven representatives of the Department of Human Resources to include the

Secretary or his designee.

(2) Sixteen members designated as consumers of services for the developmentally disabled. A consumer of services for the developmentally disabled is a person who (1) has a developmental disability or is the parent or guardian of such a person, or (2) is an immediate relative or guardian of a person with mentally impairing developmental disability, and (3) is not an employee of a State agency that receives funds or provides services under the provisions of Part A, Title 1, P.L. 90-170, as amended, "Mental Retardation Facilities and Community Health Centers Construction Act of 1963," is not a managing employee (as defined in Section 1126(b) of the Social Security Act) of any other entity that receives funds or provides services under such Part, and is not a person with an ownership or control interest (within the meaning of Section 1124(a)(3) of the Social Security Act) with respect to such an entity. Of these 16 members, at least one third shall be persons with developmental disabilities and at least another one third shall be the immediate relatives or guardians of persons with mentally impairing developmental disabilities, of whom at least one shall be an immediate relative or guardian of an institutionalized developmentally disabled person.

(3) Five members at large. The five at-large members shall be chosen from local agencies, nongovernmental agencies and groups concerned with services to persons with developmental disabilities, and higher education training facilities in North Carolina, or from the interested

public at large.

The initial members of the Council shall include the appointed members of the Council on Mental Retardation and Developmental Disabilities who shall serve for a period equal to the remainder of their current terms on the Council on Mental Retardation and Developmental Disabilities four of whose terms expire June 30, 1973, four of whose terms expire June 30, 1974, two of whose terms expire June 30, 1975, and three of whose terms expire June 30, 1976. At the end of the respective terms of office of the initial members of the Council, the appointments of all members, with the exception of those from the General Assembly and State agencies shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive

Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and

subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of

business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 169; c. 1117; 1977, c. 881, s. 3; 1979, c. 752, s. 2.)

Editor's Note. —
The 1979 amendment substituted "32" for "36" near the middle of the first sentence of the

first paragraph, and rewrote subdivisions (1), (2), and (3) of the first paragraph.

Part 14A. Policy Act for the Aging.

§ 143B-181.3. Statement of principles. — To utilize effectively the resources of our State, to provide a better quality of life for our senior citizens, and to assure older adults the right of choosing where and how they want to live, the following principles are hereby endorsed:

(1) Older people should be able to live as normal a life as possible.

(2) Older adults should have a choice of life styles which will allow them to remain contributing members of society for as long as possible.

(3) Preventive and primary health care are necessary to keep older adults

active and contributing members of society.

(4) Appropriate training in gerontology and geriatrics should be developed

for individuals serving older adults.

(5) Transportation to meet daily needs and to make accessible a broad range of services should be provided so that older persons may realize their full potential.

(6) Services for older adults should be coordinated so that all their needs can

be served efficiently and effectively.

(7) Information on all services for older citizens and advocacy for these services should be available in each county.

(8) Increased employment opportunities for older adults should be made

available.

(9) Options in housing should be made available.

(10) Planning for programs for older citizens should always be done in

consultation with them.

(11) The State should aid older people to help themselves and should encourage families in caring for their older members. (1979, c. 983, s. 1.)

Editor's Note. — Session Laws 1979, c. 983, s.

2, contains a severability clause.

§ 143B-181.4. Responsibility for policy. — Responsibility for developing policy to carry out the purpose of this Part is vested in the Secretary of the Department of Human Resources as provided in G.S. 143B-181.1 who may assign responsibility to the Assistant Secretary for Aging. The Assistant Secretary for Aging shall, at the request of the Secretary, be the bridge between the federal and local level and shall review policies that affect the well being of older people with the goal of providing a balance in State programs to meet the social welfare and health needs of the total population. Responsibilities may include:
(1) Serving as chief advocate for older adults;

(2) Developing the State plan which will aid in the coordination of all programs for older people; (3) Providing information and research to identify gaps in existing services;

(4) Promoting the development and expansion of services;

(5) Evaluation of programs;(6) Bringing together the public and private sectors to provide services for older people. (1979, c. 983, s. 1.)

Part 15. Mental Health Advisory Council.

§ 143B-183. Mental Health Advisory Council — members; selection; quorum; compensation. — The Mental Health Advisory Council of the Department of Human Resources shall consist of no more than 35 members

appointed by the Governor. The composition of the Council shall be as follows:

(1) Nine members from the General Assembly and State government agencies as follows: two members of the Senate nominated by the President of the Senate, two members of the House of Representatives nominated by the Speaker of the House of Representatives, two representatives of the Department of Public Education, two representatives of the Department of Correction, and one representative of the Department of Military and Veterans Affairs;

(2) Three members designated by the respective associations to the Governor for appointment — one member representing the North Carolina Personnel and Guidance Association, one member representing the North Carolina Council on Developmental Disabilities and one member representing the North Carolina Council of Family

Service Agencies; and

(3) Up to 23 at-large members. — These appointments shall be made pursuant to current federal rules and regulations which prescribe the selection process and demographic blend as a necessary condition to the receipt of federal aid. At the Governor's request, the Department of Human Resources shall render to the Governor such advice and assistance as may be required to make the proper appointments to meet the federal requirements. The Governor shall exercise his power of appointment to reconstitute or fill vacancies on the Council in a manner that will meet current federal rules and regulations concerning the Council.

The initial members of the Council shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability

of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman

at his pleasure.

Council members who are members of the General Assembly shall receive subsistence and travel allowance at the rate set forth in G.S. 120-3.1(a). Council members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem compensation and travel expenses at the rate set forth in G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of

All clerical and other services required by the Council shall be supplied by the Secretary of the Department. (1973, c. 476, s. 175; 1977, c. 694, ss. 3-7; 1979, c. 107, s. 10.)

Editor's Note. -The 1979 amendment substituted "G.S. 120-3.1(a)" for "G.S. 120-3.1(b) and (c)" in the fifth unnumbered paragraph.

Part 16A. North Carolina Arthritis Program Committee.

§ 143B-184. North Carolina Arthritis Program Committee; creation, composition. — (a) There is created the North Carolina Arthritis Program Committee. The committee shall consist of 12 members to be appointed by the Secretary of Human Resources as follows:

(1) One person nominated by the President of the N.C. Medical Society, (2) One person nominated by the Dean of the Bowman Gray School of

Medicine.

(3) One person nominated by the Dean of the Duke University School of Medicine,

(4) One person nominated by the Dean of the East Carolina University School of Medicine,

(5) One person nominated by the Dean of The University of North Carolina School of Medicine.

(6) Two persons nominated by the North Carolina National Health Agency Committee.

(7) One person who suffers from arthritis,

(8) One person who suffers from arthritis, or the brother, sister, parent, child, or spouse of a person who suffers from arthritis,

(9) One person representing the profession of nursing,

(10) One person representing the profession of occupational therapy, (11) One person representing the profession of physical therapy.

(b) The Secretary shall make the appointments provided in subdivisions (a)(1) through (a)(6) from a list of not to exceed five persons submitted by each

nominating agency or individual.

(c) The Secretary shall designate one member as chairman. Each member shall serve a four-year term. The initial appointments of members shall be as follows: the Secretary shall appoint the appointees designated in subdivisions (a)(1) through (a)(4) for initial terms of two years; the appointees designated in subdivisions (a)(5) through (a)(7) for initial terms of three years; and the appointees designated in subdivisions (a)(8) through (a)(11) for initial terms of four years. At the end of the respective terms of office of the initial members of the committee, the appointment of their successors shall be for terms of four years and until their successors are appointed and qualified. A vacancy occurring before the expiration of a term shall be filled in the same manner as provided for in the original appointment and the appointee shall serve the unexpired term.

(d) The committee shall meet semiannually and at such other times as called

by the chairman of the committee.

(e) The Secretary shall have the power to remove any member from the committee for misfeasance, malfeasance or nonfeasance in accordance with G.S. 143B-13.

(f) The members of the committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(g) All clerical and other services required by the committee shall be supplied by the Secretary of Human Resources within budget limitations. (1979, c. 996,

Editor's Note. — Session Laws 1979, c. 996, s. 4, makes this Part effective July 1, 1979.

§ 143B-185. Duties of Committee. — The committee shall consider the entire problem of arthritis, including research, education and services furnished arthritis victims. The committee shall have the power and the duty to recommend to the Secretary of Human Resources a long-range arthritis plan, policy guidance, and public accountability of the plan. The committee shall report annually to the Governor its findings and recommendations, and shall advise the Governor about the Arthritis Program authorized by G.S. 130-187.6. (1979, c. 996, s. 1.)

Part 19. Commission for Human Skills and Resource Development.

§§ 143B-197 to 143B-201: Repealed by Session Laws 1979, c. 504, s. 10.

Part 24. North Carolina Council for the Hearing Impaired.

§ 143B-216.5. North Carolina Council for the Hearing Impaired — receipt of moneys. — (a) The Department of Human Resources may receive moneys from any source, including federal funds, gifts, grants and bequests which shall be expended for the purposes designated in this Part. Gifts and bequests received shall be deposited in a trust fund with the State Treasurer who shall hold them in trust in a separate account in the name of the Division of Vocational Rehabilitation Services, North Carolina Council for the Hearing Impaired. The cash balance of this account may be pooled for investment purposes, but investment earnings shall be credited pro rata to this participating account. Moneys deposited with the State Treasurer in the trust fund account pursuant to this section, and investment earnings thereon, are available for expenditure without further authorization from the General Assembly. Such funds shall be administered by the North Carolina Council for the Hearing Impaired under the direction of the director and fiscal officer of the Division of Vocational Rehabilitation Services, and will be subject to audits normally conducted with the agency.

(1979, c. 540.)

the last four sentences of subsection (a). amendment, it is not set out.

Editor's Note. — The 1979 amendment added As subsection (b) was not changed by the

Part 25. Nutrition Advisory Committee.

§§ 143B-216.6, 143B-216.7: Repealed by Session Laws 1979, c. 504, s. 13.

Part 26. Governor's Council on Physical Fitness and Health.

§ 143B-216.8. Governor's Council on Physical Fitness and Health — creation; powers; duties. — There is hereby created the Governor's Council on Physical Fitness and Health in the Department of Human Resources. The

council shall have the following functions and duties:

(1) To promote interest in the area of physical fitness; to consider the need for new State programs in the field of physical fitness; to enlist the active support of individual citizens, professional and civic groups, amateur and professional athletes, voluntary organizations, State and local government agencies, private industry and business, and community recreation programs in efforts to improve the physical fitness and thereby the health of the citizens of North Carolina;

(2) To examine current programs of physical fitness available to the people of North Carolina, and to make recommendations to the Governor for coordination of programs to prevent duplication of such services; to support programs of physical fitness in the public school systems; to develop cooperative programs with medical, dental, and other groups; to maintain a liaison with government, private and other agencies concerning physical fitness programs; to stimulate research in the area of physical fitness; to sponsor physical fitness workshops, clinics, conferences, and other related activities pertaining to physical fitness throughout the State;

(3) To serve as an agency for recognizing outstanding developments, contributions, and achievements in physical fitness in North Carolina;

(4) The Council shall make an annual report to the Governor and to the Secretary of Human Resources, including therein suggestions and recommendations for the furtherance of the physical fitness of the people of North Carolina. (1979, c. 634.)

Editor's Note. — Session Laws 1979, c. 634, s. 2, provides: "Implementation of the provisions of this act is contingent upon receipt of fully supporting funds from federal and other

nonstate sources, and nothing herein contained shall be construed to obligate the General Assembly to make appropriations for this purpose."

§ 143B-216.9. The Governor's Council on Physical Fitness and Health — members; selection; quorum; compensation. — The Governor's Council on Physical Fitness in the Department of Human Resources shall consist of 10 members, including a chairman.

(1) The composition of the Council shall be as follows: one member of the Senate appointed by the President of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives, and eight persons from the health care professions, the fields of business and industry, physical education, recreation, sports and the general public. The eight nonlegislative members of the Council shall be appointed by the Governor to serve at his pleasure.

(2) The eight initial nonlegislative members of the council shall be appointed thusly: two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years. At the end of the respective terms of office of these initial members, all succeeding appointments of nonlegislative members shall be for terms of four

years; nonlegislative members shall serve no more than two consecutive four-year terms; all unexpired terms due to resignation, death, disability, removal or refusal to serve shall be filled by a qualified person appointed by the Governor for the balance of the unexpired term.

(3) Legislative members of the Council shall serve two-year terms beginning and ending on July 1 of odd-numbered years, and shall serve

no more than two consecutive terms.

(4) Members of the Governor's Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 or 138-6, or travel and subsistence expenses under G.S. 120-3.1, as appropriate.

(5) The Council shall meet no more than quarterly.

(6) A majority of the Governor's Council shall constitute a quorum for the transaction of business. (1979, c. 634.)

ARTICLE 6.

Department of Correction.

Part 3. Parole Commission.

§ 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services. — The Parole Commission shall consist of five full-time members, and the Secretary of Correction who shall serve as an ex officio, nonvoting member. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1977. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the

pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work release privileges except by majority vote of the full commission.

The full-time members of the Commission shall receive the salary fixed by the Governor and approved by the Advisory Budget Commission and shall receive

necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2.)

paragraph, which formerly read: "A majority of 867 (1978). the full-time members of the Commission shall the full-time members of the Commission shall constitute a quorum for the transaction of business."

Editor's Note. — For survey of 1977 administrative law The 1979 amendment rewrote the third affecting state government, see 56 N.C.L. Rev.

ARTICLE 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

§ 143B-276. Department of Natural Resources Development — duties.

Editor's Note. -

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Part 2. Board of Natural Resources and Community Development.

§ 143B-280. Board of Natural Resources and Community Development duties; members; selection; meetings; quorum; compensation; services. — The Board of Natural Resources and Community Development shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Natural Resources and Community Development in the development of major programs and recommend priorities for programs within

The Board of Natural Resources and Community Development shall perform such other duties as may be specifically given to it. The Board of Natural Resources and Community Development shall consist of the following 21 members. The chairman of each of the following commissions: the Wildlife Resources Commission, the Environmental Management Commission, the Marine Fisheries Commission, the Coastal Resources Commission and the Soil and Water Conservation Commission; the chairman of each of the following councils: the Earth Resources Council, the Community Development Council, the Forestry Council, the Parks and Recreation Council and the North Carolina Zoological Park Council; 10 members at large appointed by the Governor to serve at his pleasure; and the Secretary of Natural Resources and Community Development who shall be a member and chairman ex officio. The Board of Natural Resources and Community Development shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of

business.

Members of the Board shall receive per diem and necessary travel expenses in accordance with the provisions of G.S. 138-5.

All clerical and other services required by the Board shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 16; 1977, c. 771, ss. 4, 8; 1979, c. 430, s. 1.)

Editor's Note.

The 1979 amendment rewrote the third

paragraph.

Session Laws 1979, c. 430, s. 2, provides: "Notwithstanding Section 1 of this act, the members of the Board elected by the various Commissions and Councils under Chapter 1262 of the 1973 Session laws shall serve out their present terms on the Board. The first three vacancies occurring as a result of the expiration of the terms of such elected members shall be filled by the addition of the Chairman of the Coastal Resources Commission, the Soil and Water Conservation Commission, and the North Carolina Zoological Park Council in the order determined by the Governor. The membership of the Board is reduced from 25 to 21 as the remaining four vacancies occur as a result of the expiration of terms of the remaining members elected by the various Commissions and Councils."

Part 5. Marine Fisheries Commission.

§ 143B-286. Marine Fisheries Commission — creation; powers and duties. There is hereby created the Marine Fisheries Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the protection, preservation, and enhancement of the commercial and sports fisheries resources of the State.

(2) The Marine Fisheries Commission shall have the power and duty to

establish standards and adopt rules and regulations:
a. Implementing the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134 of the General Statutes of the State of North Carolina.

b. For the disposition of confiscated property as set forth in G.S.

113-137:

c. Governing all license requirements and taxes prescribed in Chapter

113. Article 14:

d. Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;

e. Governing the possession, transportation and disposition of seafood

as provided in G.S. 113-164;

f. Regarding the disposition of the young of edible fish taken incidentally and unavoidably as provided by G.S. 113-185;

g. Regarding the leasing of public grounds for oysters and clam production as provided in G.S. 113-202;

h. Governing utilization of private fisheries as provided in G.S. 113-205;

i. Repealed by Session Laws 1979, c. 253, s. 3;

j. Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters as provided in G.S. 113-265.

(1979, c. 253, s. 3.)

Editor's Note. -

The 1979 amendment repealed paragraph i of subdivision (2). Paragraph i read: "Regarding permits to dredge or fill as provided in G.S. 113-229; and."

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

Part 6. North Carolina Mining Commission.

Session Laws 1979, c. 740, amended Session repealed. Laws 1977, c. 712, s. 2 (§ 143-34.11), so as

to delete this Part from the list of statutes

Part 8. Sedimentation Control Commission.

Repeal of Part. -Session Laws 1977, c. 712, s. 2, was amended by Session Laws 1979, c. 744, s. 1, so as to postpone the repeal of this Part to July 1, 1981.

Part 9. Wastewater Treatment Plant Operators Certification Commission.

Repeal of Part. -Session Laws 1977, c. 712, s. 2, was amended by Session Laws 1979, c. 744, s. 1, so as to

postpone the repeal of this Part to July 1, 1981.

Part 13. Parks and Recreation Council.

§ 143B-312. Parks and Recreation Council - members; chairman; selection; removal; compensation; quorum; services. — The Parks and Recreation Council shall be composed of 14 members appointed by the Governor. Four of the members must reside in the western part of the State, four must reside in the Piedmont, and four must reside in the eastern part of the State. The composition of the Council shall be as follows: one person who is an active professor in the area of parks and recreation; one person who is an active professor of biology; one local government official who is involved in recreation planning and is aware of the recreational needs of communities; one person who represents private recreational interests; one person who is the chairman of the Zoological Park Council; one person who is the chairman of one of the local federal reservoir advisory committees; and six persons who are citizens of the State and have both knowledge and interest in parks and recreation management. The president of the North Carolina Recreation and Parks Society, Incorporated and a representative of the Trails Committee, as selected by that Committee, shall serve as ex officio members of the Council.

The Governor shall designate one member of the Council to serve as chairman

at his pleasure.

The members of the Council shall be appointed to terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from

office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 56; 1977, c. 771, s. 4; 1979, c. 42, s. 1.)

Editor's Note.

The 1979 amendment substituted "14" for "13" in the first sentence of the first paragraph, inserted "and a representative of the Trails

Committee, as selected by that Committee" in the last sentence of the first paragraph, and substituted "members" for "member" in the last sentence of the first paragraph.

Part 22. North Carolina Zoological Park Council.

§ 143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services. — The North Carolina Zoological Park Council of the Department of Natural Resources and Community Development shall consist of 15 members appointed by the Governor, one of whom shall be the Chairman of the Board of Directors of the

North Carolina Zoological Society.

The initial members of the Council shall be the members of the Board of Directors of the North Carolina Zoo Authority who shall serve for a period equal to the remainder of their current terms on the Board of Directors of the North Carolina Zoological Authority, all of whose terms expire July 15, 1975. At the end of the respective terms of office of the initial members of the Council, the Governor, to achieve staggered terms, shall appoint five members for terms of two years, five members for terms of four years and five members for terms of six years. Thereafter, the appointment of their successors shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive

Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 84; 1977, c. 771, s. 4; 1979, c. 30, s. 1.)

Editor's Note.

The 1979 amendment added "one of whom shall be the Chairman of the Board of Directors of the North Carolina Zoological Society" at the end of the first paragraph.

Session Laws 1979, c. 30, s. 2, provides: "Appointment of the Chairman of the Board of the Zoological Society to the Council shall take place upon the occurrence of the first vacancy on the Council."

Part 24. North Carolina Employment and Training Council.

§ 143B-340. North Carolina Employment and Training Council creation; duties and responsibilities. — There is hereby created a North Carolina Employment and Training Council, within the Department of Natural Resources and Community Development hereinafter referred to as "the Council.'

The Council shall have the following duties and responsibilities:

(2) To review continuously the plans and programs of agencies operating federally funded programs related to employment and training and of other agencies providing employment and training-related services in the State.

(4) To conduct studies, prepare reports including an annual report to the Governor which shall be a public document, and to provide such advisory services as may be authorized or directed by the Governor or the Secretary of Natural Resources and Community Development. (1979, c. 153, s. 1.)

inserted "continuously" in subdivision (2), the amendment, only the introductory language inserted "including an annual report to the and subdivisions (2) and (4) are set out. Governor which shall be a public document" in subdivision (4), and inserted "to" before "provide such advisory" in subdivision (4).

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Editor's Note. - The 1979 amendment As the rest of the section was not changed by

§ 143B-341, North Carolina Employment and Training Council structure; staff support; related councils. — The North Carolina Employment and Training Council shall be appointed by the Governor in a manner consistent with federal law and regulations governing State employment and training councils. The Council shall serve at the pleasure of the Governor. The Governor shall appoint a public member as chairperson consistent with federal requirements.

The Council shall meet at least five times annually at the call of the chairman or the Secretary of Natural Resources and Community Development. A majority of the Council shall constitute a quorum for the transaction of business. Members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, 138-6, or 120-3.1, as the case may

The Council may create such committees as may be necessary to the proper conduct of its business. The Governor may establish such additional advisory bodies, in accordance with existing law, related to employment and training as may be necessary and appropriate to the conduct of federally supported employment and training-related programs.

Clerical and other services required by the Council shall be supplied by the

Secretary of Natural Resources and Community Development.

The Secretary of Natural Resources and Community Development or his designee shall serve as Secretary of the Council. (1977, c. 771, s. 6; 1979, c. 153,

Editor's Note. - The 1979 amendment "five" for "three" in the first sentence of the rewrote the first paragraph, and substituted second paragraph.

Part 25. Triad Park Commission.

§ 143B-342. Triad Park Commission created; membership; organization. — The Triad Park Commission is created, to consist of 15 members to be selected as follows: The Forsyth County Board of Commissioners and the Guilford County Board of Commissioners shall each appoint two members; the City Council of each of the principal cities in the Triad area — Greensboro, High Point, Kernersville, and Winston-Salem — shall each appoint two members; the Lieutenant Governor shall appoint one member-at-large, the Speaker of the House shall appoint one member-at-large; and the Governor shall appoint one member-at-large. The Governor shall designate one member to serve as chairman. All appointments shall be made in time for the Commission to begin its work not later than August 1, 1979.

The Commission may elect from its membership other officers which it deems

appropriate, and may adopt rules of procedure governing its meetings. The Commission may utilize the expertise of appropriate local agencies in

performing its duties, and the Department of Natural Resources and Community Development may assist the Commission in its work. (1979, c. 1054, s. 1.)

Editor's Note. — Session Laws 1979, c. 1054, s. 6, makes this Part effective July 1, 1979.

§ 143B-343. Powers. — The Commission shall:

(1) Recommend to the Department of Natural Resources and Community Development the types and locations of any State parks, recreation areas, open spaces, and greenways to be established in the Triad area so as to minimize the problems caused by urban sprawl, lack of watershed protection, inadequate recreational areas and greenways, and similar conditions resulting from increased population and development in the area; and shall make an initial report to the Department by December 15, 1979;

(2) Hold public hearings and conduct such other activities as the Commission deems necessary to carry out its duties under this Part;

- (3) Subject to the availability of operating funds, employ such staff assistance as the Commission deems necessary. (1979, c. 1054, s. 2.)
- § 143B-344. Compensation of commissioners. Subject to the availability of funds, members of the Commission who are also State employees shall be paid the allowances authorized by G.S. 138-6; members of the Commission who are also members of the General Assembly shall be paid subsistence and travel allowances authorized by G.S. 120-3.1; all other members of the Commission shall be paid the per diem and allowances authorized by G.S. 138-5. (1979, c. 1054, s. 3.)
- § 143B-344.1. Termination. The Triad Park Commission shall terminate on September 1, 1985. (1979, c. 1054, s. 4.)
- § 143B-344.2. Commission as public authority. For the purposes of Article 3 of Chapter 159 of the General Statutes, the Triad Park Commission is a public authority. (1979, c. 1054, s. 5.)

ARTICLE 9.

Department of Administration.

Part 2. State Goals and Policy Board.

§ 143B-371. State Goals and Policy Board — creation; powers and duties.

Cross References. — For the North Carolina Balanced Growth Policy Act, see § 143-506.6 et seq.

Part 5. North Carolina Drug Commission.

§§ 143B-377, 143B-378: Repealed by Session Laws 1977, c. 667, s. 1.

Cross Reference. — For present provisions as to the North Carolina Drug Commission, see §§ 143B-210 to 143B-212.

Part 7. Youth Councils.

§ 143B-386. State Youth Advisory Council — members; selection; quorum; compensation. — The State Youth Advisory Council of the Department of Administration shall consist of 20 members. The composition and appointment of the Council shall be as follows:

Ten youths to be elected by the procedure adopted by the Youth Advisory Council, which shall include a requirement that four of the members represent youth organizations; and 10 adults to be appointed by the Governor at least four of whom shall be individuals working on youth programs through youth organizations. Provided that no person shall serve on the Board for more than

two complete consecutive terms.

The initial members of the Council shall be the appointed members of the Youth Advisory Board who shall serve for a period equal to the remainder of their current terms on the Youth Advisory Board. The current terms of the youth members expire July 1, 1976, the current terms of four of the adult members expire April 7, 1976, and the remaining four adult members' terms expire May 1, 1978. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be as follows:

(1) Eight youth members to serve for terms beginning on July 1, 1976, and expiring on June 30, 1977, and two additional youth members to serve for terms beginning on July 1, 1977, and expiring on June 30, 1978. At the end of the terms of office of these youth members of the Council, the appointment of their successors shall be for terms of one year and

until their successors are appointed and qualify.

(2) Four adult members to serve for terms beginning on April 8, 1976, and expiring on June 30, 1979; four adult members to serve for terms beginning on May 1, 1978, and expiring on June 30, 1980; one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1978; and one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1979. At the end of the respective terms of office of these adult members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The total membership shall reasonably reflect the socioeconomic, ethnic, sexual and sectional composition of the State.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive

Organization Act of 1973.

The Governor shall designate an adult member of the Council to serve as chairman at the pleasure of the Governor. The Council shall elect a youth member to serve as vice-chairman for a one-year term.

A majority of the Council shall constitute a quorum for the transaction of

business.

Members of the Council who are not officers or employees of the State shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 27; 1977, c. 510; 1979, c. 410.)

Editor's Note. -

represent youth organizations" in the first The 1979 amendment added "which shall sentence of the second paragraph, added "at include a requirement that four of the members least four of whom shall be individuals working on youth programs through youth the second paragraph, and added the second organizations" at the end of the first sentence of sentence of the second paragraph.

Part 9. North Carolina Human Relations Council.

§ 143B-391. North Carolina Human Relations Council — creation; powers and duties.

Federal Age Discrimination Action Plaintiff Need Not Seek Recourse from Human Jurisdictional Relations Council as Prerequisite. — Recourse by a plaintiff to the North Carolina Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act, 29 U.S.C. §§ 201-219, since § 143-422.1 et seq. is not "a law prohibiting discrimination in employment because of age, and the North Carolina Human Relations Council is not a "state authority established or authorized to grant or seek relief from such discriminatory practice," within the meaning of 29 U.S.C. § 633(b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

Part 10. Council on the Status of Women.

§ 143B-393. Council on the Status of Women — creation; powers and duties. — There is hereby created the Council on the Status of Women of the Department of Administration. The Council on the Status of Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the

State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and

(3) To establish programs for the assistance of displaced homemakers as set forth in Part 10B of this Article. (1975, c. 879, s. 37; 1979, c. 1016, s. 1.)

Editor's Note. The 1979 amendment, effective July 1, 1979, added subdivision (3).

Part 10A. Officer of Coordinator of Services for Victims of Sexual Assault.

§ 143B-394.2. Office of Coordinator of Services for Victims of Sexual Assault — office created.

Editor's Note. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Part 10B. Displaced Homemakers.

§ 143B-394.4. Definitions. — As used in this Part, unless the context otherwise requires:

(1) "Center" means any multi-purpose service facility for displaced homemakers established pursuant to this Part;

(2) "Council" means the Council on the Status of Women;

(3) "Department" means the Department of Administration; (4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household for at least five years and during which period has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required training or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support from a spouse but is within two years of losing such support, or has been supported by public assistance as the parent of minor children but is no longer eligible, or is within two years of losing such eligibility. (1979, c. 1016, s. 2.)

Editor's Note. — Session Laws 1979, c. 1016, s. 4, makes this Part effective July 1, 1979.

- § 143B-394.5. Establishment of center; location. The Council shall establish or contract for the establishment of a pilot center for displaced homemakers. In determining where to locate the center, the Council shall consider, with respect to each proposed location, the probable number of displaced homemakers in the area and the availability of resources for training and education. (1979, c. 1016, s. 2.)
- § 143B-394.6. Staff for center. To the maximum extent feasible, the staff of the center, including technical, administrative, and advisory positions, shall be filled by displaced homemakers. Where necessary, potential staff members shall be provided with on-the-job training. (1979, c. 1016, s. 2.)
- § 143B-394.7. Funding. The Council shall explore all possible sources of funding and in-kind contributions from federal, local and private sources in establishing the center. The Council is authorized to accept any funding or other contributions such as building space, equipment, or services of training personnel. (1979, c. 1016, s. 2.)
- § 143B-394.8. Services to be provided. (a) The center shall be designed to provide displaced homemakers with such necessary counseling, training, services, skills, and education as would enable them to secure gainful employment, and as would be necessary for their health, safety, and well-being.
 - (b) The center shall provide:
 (1) Job counseling programs specifically designed for displaced homemakers entering the job market, taking into consideration their previous absence from the job market, and their lack of recent paid work experience, and taking into account and building upon the skills and experience possessed by the displaced homemaker.

and experience possessed by the displaced homemaker;

(2) Job training and job placement services to train and place displaced homemakers for and into available jobs in the public and private sectors:

(3) Health education and counseling services with respect to general principles of preventive health care, including but not limited to family health care, nutrition education, and the selection of physicians and health care services;

(4) Financial management services with information and assistance on all aspects of financial management including but not limited to insurance, taxes, estate and probate matters, mortgages, and loans; and

(5) Educational services, including information services concerning available secondary and post-secondary education programs beneficial to displaced homemakers seeking employment; and information services with respect to all employment in the public or private sectors, education, health, public assistance, and unemployment assistance programs. (1979, c. 1016, s. 2.)

§ 143B-394.9. Rules and regulations; evaluation. — (a) The Department shall, upon recommendations by the Council, promulgate rules and regulations concerning the eligibility of persons for the services of the center and governing

the granting of any stipends to be provided.

(b) The Council shall require the director and staff of the center to evaluate the effectiveness of the job training, placement, and service components of the center. The evaluation shall include the number of persons trained, the number of persons placed in employment, follow-up data on such persons, the number of persons served by the various service programs, and the cost effectiveness of each component of the center. (1979, c. 1016, s. 2.)

Part 14. Advocacy for the Handicapped.

§§ 143B-402, 143B-403: Repealed by Session Laws 1979, c. 575, s. 1, effective July 1, 1979.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

§ 143B-403.1. Governor's Advocacy Council for Persons with Disabilities — creation; powers and duties. — There is hereby created the Governor's Advocacy Council for Persons with Disabilities of the Department of Administration. The Council shall have the following functions and duties:

(1) To provide for a statewide program of protection and advocacy in accordance with section 113 of Public Law 94-103, Developmental Disabilities Services and Facilities Construction Act, as amended;

(2) To pursue legal, administrative, or other appropriate remedies to insure the protection of the rights of all developmentally, mentally, physically, emotionally and otherwise disabled persons who are receiving treatment, services, or habilitation from any State, local, or area

(3) To review and recommend changes in all laws, rules, regulations, programs and policies of this State or any agency or subdivision thereof to insure the rights of the developmentally, mentally, physically,

emotionally and otherwise disabled persons are safeguarded;
(4) To investigate complaints concerning the violation of the rights of the developmentally, mentally, physically, emotionally and otherwise disabled persons and to take appropriate action;

(5) To contract with public agencies or private nonprofit corporations to fulfill any of the functions and duties provided for in subdivisions (2)

and (6) and government funded programs;
(6) To aid and assist local advocacy program and the advocacy programs in mental retardation centers, psychiatric hospitals, and training schools;

(7) To perform such other functions as are necessary to protect the rights of the developmentally, mentally, physically, emotionally and otherwise disabled or as may be assigned by the Secretary of Administration;
(8) To advise and assist the Department of Administration on the continuing

program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field;

(9) To work in close cooperation with the President's Committee on the Employment of the Handicapped to carry out more effectively the purpose of Article 29A of Chapter 143 of the General Statutes, and with State and federal agencies having responsibilities for employment and

rehabilitation of the handicapped;

(10) To promote and encourage the holding of appropriate ceremonies throughout the State during the "National Employ the Handicapped" Week." the purpose of which ceremony shall be to enlist public support for interest in the employment of the developmentally, mentally, physically, emotionally and otherwise disabled; and
(11) The Council shall advise the Secretary of Administration upon any

matter the Secretary may refer to it. (1977, c. 822, s. 1; 1979, c. 575.)

Editor's Note. — Session Laws 1979, c. 575, s. 2, makes this Part effective July 1, 1979.

§ 143B-403.2. Governor's Advocacy Council for Persons with Disabilities - members; selection; quorum; compensation. — The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of 22 members. The composition of the Council shall be as follows: four "ex officio" members from State government agencies as follows: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of the Department of Human Resources and the Chairman of the Employment Security Commission. The Governor shall appoint the remaining 18 members as follows: two of the remaining 18 members shall be legislators (one being a representative from the House and one being a representative of the Senate); of the remaining 16 members, at least eight shall be disabled persons or parents of disabled persons.

The initial term for one half of the members appointed by the Governor shall be two years. The initial term for the remaining members appointed by the Governor shall be four years. At the end of the respective terms of office of the initial members of the Council, the appointment of all members with the exception of those from State agencies, shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

Secretary of Administration. (1977, c. 822, s. 1; 1979, c. 575.)

The Governor may remove any member of the Council appointed by the

The Governor shall designate one member of the Council to serve as chairman and one member to serve as vice-chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of

business. All clerical and other services required by the Council shall be supplied by the

Part 15. North Carolina State Commission of Indian Affairs.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 2, as amended by Session Laws 1979, c. 744, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to

conduct a performance evaluation of the programs and functions of each such agency and report to the General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-404. North Carolina State Commission of Indian Affairs creation; name. — There is hereby created and established the North Carolina State Commission of Indian Affairs. The commission shall be administered under the direction and supervision of the Department of Administration pursuant to G.S. 143A-6(b) and (c). (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. - The 1977, 2nd Sess., amendment deleted "a commission to be known as" following "established" near the beginning sentence and added the second sentence.

of the first sentence, deleted "of the Department

§ 143B-405. North Carolina State Commission of Indian Affairs purposes for creation. — The purposes of the commission shall be to deal fairly and effectively with Indian affairs; to bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina; to provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships; to assist Indian communities in social and economic development; and to promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1: 1977, 2nd Sess., c. 1189.)

Editor's Note. - The 1977, 2nd Sess., amendment reenacted this section without change.

§ 143B-406. North Carolina State Commission of Indian Affairs — duties: use of funds. — It shall be the duty of the commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the commission; to study the existing status of recognition of all Indian groups, tribes and communities presently existing in the State of North Carolina; to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups; to provide for official State recognition by the commission of such groups; and to initiate procedures for their recognition by the federal government. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. — The 1977, 2nd Sess., groups" near the end of the section and made amendment inserted "to provide for official certain minor changes in punctuation and State recognition by the commission of such wording throughout the section.

§ 143B-407. North Carolina State Commission of Indian Affairs membership; term of office; chairman; compensation. — (a) The State Commission of Indian Affairs shall consist of the Speaker of the House of Representatives, the Lieutenant Governor, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Natural Resources and Community Development, the Commissioner of Labor or their designees and 15 representatives of the Indian community. These 15 Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Haliwa, two; the Lumbees, three; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. If the Eastern Band of Cherokees should choose to participate, then they shall have two members on the commission thereby bringing the total Indian membership to 17.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. Thereafter, all commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the commission from among the Indian members of the commission, subject

to ratification by the full commission.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, § 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. -

sentence of subsection (a) and rewrote the

remainder of subsection (a). In subsection (b), The 1977, 2nd Sess., amendment added "or the amendment substituted "the Lumbees" for their designees and 15 representatives of the "each tribe or group" near the end of the second Indian community" at the end of the first sentence and inserted "all" near the beginning of the third sentence.

§ 143B-408. North Carolina State Commission of Indian Affairs **meetings**; quorum; proxy vote. — (a) The commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Simple majority of the Indian members of the commission must be present

to constitute a quorum.

(c) Proxy vote shall not be permitted. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. — The 1977, 2nd Sess., of their office within State government" amendment deleted "and two members by virtue following "commission" in subsection (b).

§ 143B-409. North Carolina State Commission of Indian Affairs — reports. — The commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the commission may deem proper. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. —
The 1977, 2nd Sess., amendment reenacted
this section without change.

§ 143B-410. North Carolina State Commission of Indian Affairs — fiscal records; clerical staff. — Fiscal records shall be kept by the Secretary of Administration and will be subject to annual audit by a certified public accountant. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. — The 1977, 2nd Sess., amendment reenacted this section without change.

§ 143B-411. North Carolina State Commission of Indian Affairs—executive director; employees.—The commission may, subject to legislative or other funds that would accrue to the commission, employ an executive director to carry out the day-to-day responsibilities and business of the commission. The executive director, also subject to legislative or other funds that would accrue to the commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the commission. The executive director shall not be a member of the commission, and shall be of Indian descent. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. — The 1977, 2nd Sess., descent" for "should be of Indian extraction" at amendment substituted "shall be of Indian the end of the last sentence.

Part 16. Governor's Council on Employment of the Handicapped.

§§ 143B-412, 143B-413: Repealed by Session Laws 1979, c. 575, s. 1, effective July 1, 1979.

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties. — There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of

the following offices or departments:

a. Office of the Governor

b. Department of Administration
c. Department of Correction
d. Department of Cultural Resources

e. Department of Revenue

f. Department of Transportation
g. Department of Natural Resources and Community Development

h. Department of Commerce
i. Department of Crime Control and Public Safety
j. Department of Human Resources

k. Office of the Lieutenant Governor 1. Office of the Secretary of State m. Office of the State Auditor
n. Office of the State Treasurer
o. Department of Public Education

p. Department of Justice q. Department of Agriculture
r. Department of Labor
s. Department of Insurance

t. Office of the Speaker of the House of Representatives;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1). (1977, c. 771, s. 4; c. 967; 1979, c. 783.)

The 1979 amendment added paragraph t to subdivision (1).

Part 19. Jobs for Veterans Committee.

§ 143B-420. Governor's Jobs for Veterans Committee — creation: appointment, organization, etc.; duties.

Editor's Note. — For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854

Part 20. Public Officers and Employees Liability Insurance Commission.

§ 143B-422. Commission created; membership. — There is hereby created within the Department of Administration a Public Officers and Employees Liability Insurance Commission. The Commission shall consist of 10 members who shall be appointed as follows: The Governor shall appoint six members as follows: two members who are members of the insurance industry who may be chosen from a list of three nominees submitted to the Governor by the Independent Insurance Agents of North Carolina, Inc., and a list of three nominees submitted by the Carolinas Association of Professional Insurance Agents, North Carolina Division; one member who is employed by a police department who may be chosen from a list of three nominees submitted to the Governor jointly by the North Carolina Police Chiefs Association and North Carolina Police Executives Association, and one member who is employed by a sheriff's department who may be chosen from a list of three nominees submitted to the Governor by the North Carolina Sheriffs' Association; one member

representing city government who may be chosen from a list of three nominees submitted to the Governor by the North Carolina League of Municipalities; and one member representing county government who may be chosen from a list of three nominees submitted to the Governor by the North Carolina Association of County Commissioners; the Lieutenant Governor shall appoint one member who shall be a member of the North Carolina Senate; the Speaker of the House of Representatives shall appoint one member who shall be a member of the North Carolina House of Representatives. The Secretary of the Department of Crime Control and Public Safety or his designate shall be an ex officio member. The Attorney General or his designate shall be an ex officio member. One insurance industry member appointed by the Governor shall be appointed to a term of two years and one insurance industry member shall be appointed to a term of four years. The police department member shall be appointed to a term of two years and the sheriff's department member shall be appointed to a term of four years. The representative of county government shall be appointed to a term of two years and the representative of city government to a term of four years. The member appointed by the Lieutenant Governor shall be appointed to a term of four years. The member appointed by the Speaker of the House shall be appointed to a term of two years. If any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member. After the initial terms established herein have expired, all appointees to the Commission shall be appointed to terms of four years.

The Commission members shall elect the chairman and vice-chairman of the Commission. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good

cause. (1979, c. 325, s. 1.)

§ 143B-423. Meetings of Commission; compensation. — The Commission shall meet at least four times per year, on or about January 15, April 15, July 15, October 15 and upon call of the chairman. The members shall receive no compensation for attendance at meetings, except a per diem expense reimbursement. Legislative members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1 from funds made available to the Commission. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission. (1979, c. 325, s. 1.)

§ 143B-424. Powers and duties of Commission. — The Commission may acquire from an insurance company or insurance companies a group plan of professional liability insurance covering the law enforcement officers and/or public officers and employees of any county or municipality of the State. The Commission shall have full authority to negotiate with insurance companies submitting bids or proposals and shall award its group plan master contract on the basis of the company or companies found by it to offer maximum coverage at the most reasonable premium. The Commission is authorized to enter into a master policy contract of such term as it finds to be in the best interests of the law-enforcement officers and/or public officers and employees of the counties and municipalities of the State, not to exceed five years. The Commission, in negotiating for such contract, is not authorized to pledge or offer the credit of the State of North Carolina. The insurance premiums shall be paid by the counties or municipalities whose employees are covered by the professional liability insurance. Any municipality or county may elect coverage for any or all

of its employees on a departmental basis; provided all employees in a department must be covered if coverage is elected for that department. Nothing contained herein shall be construed to require any county or municipality to participate in any group plan of professional liability insurance.

The Commission may, in its discretion, employ professional and clerical staff whose salaries shall be as established by the State Personnel Commission.

Should the Commission determine that reasonable coverage is not available at a reasonable cost, the Commission may undertake such studies and inquiries into the situation and alternatives, including self insurance and State administered funds, as the Commission deems appropriate. The Commission shall then bring before the General Assembly such recommendations as it deems appropriate.

The Commission may acquire information regarding loss ratios, loss factors, loss experience and other such facts and figures from any company issuing professional liability insurance covering public officers, employees or law-enforcement officers in the State of North Carolina. Such information shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes where it names the company divulging such information, but the Commission may make public such information to show aggregate statistics in respect to the experience of the State as a whole. The information shall be provided to the Commission upon its written demand and shall be submitted to the Commission by such company or companies upon sworn affidavit. If any company shall fail or refuse to supply such information to the Commission within a reasonable time following receipt of the demand, the Commission may apply to the Superior Court sitting in Wake County for appropriate orders to enforce the demand. (1979, c. 325, s. 1.)

- § 143B-425. Commission to act as liaison; meetings of Commission. The Commission shall act as liaison between the insurance company or companies with which it contracts, their servicing agent and the insureds. The Commission shall give notice of its meetings to the company or companies and to all insureds. The Commission shall attempt to resolve such difficulties as arise in the servicing and administration of the program of insurance between the company and insureds. (1979, c. 325, s. 1.)
- § 143B-426. Contract conditions. The Commission, in procuring and negotiating for the contract of insurance herein described shall include in any procurement document the following conditions, which are not subject to negotiation and which are deemed a part of the said contract when entered into:

(1) The master policy shall be issued in the name of the Commission and shall include all governmental entities for which coverage was request-

ed in the procurement document.

- (2) The company or companies selected must name a servicing agent resident in North Carolina who shall issue all certificates, collect all premiums, process all claims, and be responsible for all processing, service and administration of the program of insurance provided. (1979, c. 325, s. 1.)
- § 143B-426.1. Payment a public purpose. The payment by any county or municipality of funds as premiums for professional liability insurance through the plan provided herein, covering the law enforcement officers or public officials or employees of such subdivision of government, is declared to be for a public purpose. (1979, c. 325, s. 1.)

Part 21. New Generation Interagency Committees.

§ 143B-426.2. Declaration of findings and policy. — It is the policy of the State of North Carolina to afford each new generation of children greater opportunities and to burden it with fewer disabilities than the preceding generation had. The General Assembly finds that the family is the most effective institution through which to meet the needs of children; that the family alone can not meet all of the essential needs of each new generation of children, particularly in the areas of health care and education; and that the wide range of programs and agencies serving the needs of children requires that steps be taken to coordinate their efforts. The General Assembly declares, therefore, that it is the policy of the State to promote and encourage programs and practices to support and strengthen families in North Carolina; to give priority to health care programs, especially preventive and ambulatory care services, which are particularly appropriate to children; to encourage every child to acquire the basic skills necessary to achieve a meaningful life; to encourage the establishment of a system of child care accessible to families that need and want the service; and to provide a structure through which child-centered programs may be coordinated for maximum effectiveness. (1979, c. 898, s. 1.)

§ 143B-426.3. New Generation Interagency Committee - creation; membership; structure. — (a) The New Generation Interagency Committee is created. The Committee consists of the Governor of North Carolina, the Superintendent of Public Instruction, the Secretary of Human Resources, the Secretary of Cultural Resources, the Associate Dean and Director of the Agricultural Extension Service of North Carolina State University, the Director of the Office of Citizen Affairs, the Director of the Governor's Advocacy Council on Children and Youth, the Director of the State Goals and Policy Board, one member of the North Carolina House of Representatives appointed by the Speaker of the House, and one member of the North Carolina Senate appointed by the President of the Senate. Legislative members are appointed for two-year terms, beginning February 1 of each odd-numbered year.

(b) The Governor is chairperson of the Committee. The vice-chairperson is designated by the Governor from among the membership of the Committee,

after consultation with the members of the Committee.

(c) The Committee meets regularly at such times and in such places as the Governor deems necessary to accomplish its functions. The Governor may call special meetings at any time and place.
(d) The Governor shall organize the work of the Committee, and shall prepare

rules of procedure governing the operation of the Committee.

(e) No member of the Committee shall receive compensation for services on the Committee, except that members of the General Assembly shall receive travel and subsistence at the rates set out in G.S. 120-3.1, for services on the Committee when the General Assembly is not in session. (1979, c. 898, s. 1.)

Editor's Note. - Session Laws 1979, c. 898, s. made for terms to expire January 31, 1981; 2, provides: "Schedule. The initial appointments of the legislative members of the New Generation Interagency Committee shall be

thereafter appointments of these members shall be for terms of two years.'

§ 143B-426.4. New Generation Interagency Committee — powers and duties. — The New Generation Interagency Committee has the following powers and duties:

(1) To improve communication and coordination among State, regional, and local programs, agencies and activities relating to family and children

policy:

(2) To communicate with federal agencies dealing with family and children services and policy, and to work toward a coordinated effort with those agencies;

(3) To identify areas of duplication of services to families and children and

to identify ways of eliminating the duplication;

(4) To identify gaps in existing services to families and children and to formulate new programs and changes in existing programs to effectuate the policies set out in this Article;

(5) To receive and review statistics, research findings and recommendations from citizens and professionals, and to develop procedures and

guidelines that will improve services to families and children;

(6) To modify policy, programs, procedures and regulations that serve as barriers to the effective delivery of services to families and children;

(7) To perform other duties assigned by the Governor for the purpose of effectuating the policies set out in this Article. (1979, c. 898, s. 1.)

§ 143B-426.5. County New Generation Interagency Committees authorized; purpose. — Boards of county commissioners may create county New Generation Interagency Committees to coordinate the work of the various existing agencies which offer services in their respective counties to children and their families. Any board of county commissioners may designate an existing interagency council as the New Generation Interagency Committee for that county. County New Generation Interagency Committees shall be committed to raising a literate and healthy new generation of children, and shall bring together all existing resources to help the family and the community insure good development, health care and education for each child in his early formative years. (1979, c. 898, s. 1.)

§ 143B-426.6. County New Generation Interagency Committees — membership; organization; procedures. — (a) County New Generation Interagency Committees shall include a representative of the public schools; social services; mental health; developmental evaluation centers; health departments; county, municipal or regional libraries; agricultural extension office; and any other child-serving agencies designated by the board of county commissioners.

(b) The board of county commissioners may designate the county manager or any other person as chairperson of the county committee. Members of the county committee shall elect one of their number as vice-chairperson of the committee.

- (c) Each county committee shall adopt its own rules of procedure, and shall meet regularly at such times and places as it deems necessary. Special meetings of the Committee may be called by the chairperson. Each county committee may create working groups needed to assist the Committee. The chairperson shall have general administrative authority to organize the work of the Committee. (1979, c. 898, s. 1.)
- § 143B-426.7. County New Generation Interagency Committees powers and duties. County New Generation Interagency Committees have the following powers and duties: (1) To improve communication and coordination among agency programs

for children and their families;

(2) To assess the health and educational status of the county's children; (3) To review the county's spending for children and to search for ways to eliminate service duplication;

(4) To plan and organize county conferences of citizens and professionals in an effort to assess and improve the health and educational status of children;

(5) To plan and promote coordinated agency efforts to improve conditions such as the infant mortality rate, the nutritional status, and the educational attainment of the county's children:

(6) To recommend to the county commissioners such cooperative efforts and modifications of policy, plans and programs as the council considers

necessary and desirable;

(7) Upon approval by the county commissioners, to recommend to the State New Generation Interagency Committee such changes in legislation, policy and administrative regulation as would serve to facilitate the effective delivery of services to children and their families;

(8) To continuously educate and inform the general public regarding

matters affecting children and their families;

(9) To perform such other powers, duties, and functions as the board of county commissioners may prescribe. (1979, c. 898, s. 1.)

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.8. Definitions. — As used in this Part, except where the context clearly requires otherwise:

(1) "Agency" means the North Carolina Agency for Public

Telecommunications.

(2) "Board" means the Board of Public Telecommunications

Commissioners.

(3) "Telecommunications" means any origination, creation, transmission, emission, storage-retrieval, or reception of signs, signals, writing, images and sounds, or intelligence of any nature, by wire, radio, television, optical or other electromagnetic systems. (1979, c. 900, s. 1.)

Editor's Note. — Session Laws 1979, c. 900, s. 3, makes this Part effective July 1, 1979.

§ 143B-426.9. North Carolina Agency for Public Telecommunications creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation. — The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

(1) A Chairman appointed by, and serving at the pleasure of, the Governor;(2) Ten at-large members, appointed by the Governor from the general public;

(3) Two members of the North Carolina House of Representatives, appointed by the Speaker of the House of Representatives;

(4) Two members of the North Carolina Senate, appointed by the President

of the Senate:

(5) The Secretary of Administration, ex officio;(6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio:

(7) The Chairman of the State Board of Education, ex officio;
(8) The Chairman of the North Carolina Privacy and Freedom of Information Commission (if and when established), ex officio;

(9) The Chairman of the North Carolina Utilities Commission, ex officio; (10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio:

(11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;

(12) The Superintendent of Public Instruction, ex officio;

(13) The President of The University of North Carolina, ex officio;

(14) The President of the Department of Community Colleges, ex officio; and

(15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6,

appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30, 1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons; and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The terms of the members of the North Carolina House of Representatives and the North Carolina Senate are coterminous with their terms in office and

until their successors are appointed and qualified.

The terms of the rotating ex officio members shall be of one-year duration,

and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of

the Board.

Ad interim appointments to fill vacancies on the Board are for the balance of the unexpired term and are made in the same manner as was the original appointment.

The Governor may remove any member of the Board from office in accordance

with the provisions of G.S. 143B-16.

The Board meets quarterly and at other times at the call of the chairman or

upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business. (1979, c. 900, s. 1.)

§ 143B-426.10 Purpose of Agency. — The North Carolina Agency for Public Telecommunications shall serve as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To advise the Governor, the Council of State, the principal State

departments, the University of North Carolina, the General Assembly and all other State agencies and institutions on all matters of telecommunications policy as may affect the State of North Carolina and its citizens;

(2) To foster and stimulate the use of telecommunications programming, services and systems for noncommercial educational and cultural purposes by public agencies for the improvement of the performance of governmental services and functions;

- (3) To serve State government, local governments and other public agencies and councils in the following ways:
 - a. To provide a clearinghouse of information about innovative projects, programs or demonstrations in telecommunications;
- b. To provide advice on the acquisition, location and operation of telecommunications systems, equipment, and facilities and to provide particularly such advice as may foster compatibility of systems, equipment and facilities and as may reduce or eliminate duplication or mismatching of systems and facilities;
- c. To provide advice on the disposition of excess or unused telecommunications equipment;
 - d. To provide information and advice on new telecommunications
- developments and emerging technologies; e. To provide advice on procurement matters on all purchases and
 - contracts for telecommunications systems, programming and services:
- f. To provide information and advice on the most cost-effective means of using telecommunications for management, operations and service delivery;
- g. To provide advice and assistance in the evaluation of alternative media programming so that the most efficient and effective products may be developed and used;
- h. To provide advice and assistance in the identification of various methods of distributing programs and materials;
 (4) To study the utilization of the frequency spectrum and to advise
 - appropriate authorities as to effective frequency management;
- (5) To assist in the development of a State plan or plans for the best development of telecommunications systems, both public and private, to insure that all citizens of North Carolina will enjoy the benefits which such systems may deliver;
- (6) In addition to and not in place of the programs, projects, and services of The University of North Carolina Center for Public Television (or its functional predecessor), to develop and provide media programs and programming materials and services of a noncommercial educational, informational, cultural or scientific nature;
- (7) To undertake innovative projects in interactive telecommunications and teleconferencing whenever such projects might serve to improve services, expand opportunities for citizen participation in government and reduce the costs of delivering a service;
- (8) To serve as a means of acquiring governmental and private funds for use in the development of services through telecommunications;
 - (9) To serve as a means of distributing State funds and awarding grants for any purpose determined to be in furtherance of the purposes of this Part;
 - (10) To operate such telecommunications facilities or systems as may fall within the purview of this Part or as may be assigned to the Agency by the Governor, by the General Assembly, or by the Secretary of Administration consistent with the provisions of G.S. 143-340(14);
- (11) To review, assess and report to the Governor on an annual basis on the telecommunications needs and services of State and local government and on the production capabilities and services, the nonproduction services, and the research and development services offered by the Agency and by all other agencies of State government;
- (12) To review, assess and report to the Governor, after a period of not less than two years and not more than three years after the enactment of this Part, on the telecommunications statutes, plans and operations in State government, including those resulting from the enactment of this

Part and from revision of statutes pertaining to telecommunications in the Department of Administration;

(13) To serve as liaison between State government and local governments, regional organizations, the federal government, foundations and other states and nations on common telecommunications concerns;

(14) To study and evaluate all existing or proposed statutes, rules or regulations at all levels of government touching upon or affecting telecommunications policy, services, systems, programming, rates or funds and to advise the appropriate officials, agencies and councils;

(15) To acquire, construct, equip, maintain, develop and improve such facilities as may be necessary to the fulfillment of the purpose of the

Part;

(16) To provide information and advice on any related matter which may be referred to it by any agency or council of State or local government;

(17) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of telecommunications services within State government and which may increase the delivery of services through telecommunications programs or systems.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the possibilities of telecommunications programming, services and systems in the State of North

Carolina. (1979, c. 900, s. 1.)

§ 143B-426.11. Powers of Agency. — In order to enable it to carry out the purposes of this Part, the Agency:

(1) Has the powers of a body corporate, including the power to sue and be sued, to make contracts, to hold and own copyrights and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) May make all necessary contracts and arrangements with any parties which will serve the purposes and facilitate the business of the North Carolina Agency for Public Telecommunications; except that, the Agency may not contract or enter into any agreement for the production by the Agency of programs or programming materials with any person, group, or organization other than government agencies; principal State departments; public and noncommercial broadcast licensees;

(3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber and dispose of such property, real or personal; and construct, maintain, equip and operate any facilities, buildings, studios, equipment, materials, supplies and systems as said Board may deem proper to

carry out the purposes and provisions of this Part;

(4) May establish an office for the transaction of its business at such place or places as the Board deems advisable or necessary in carrying out the

purposes of this Part;

(5) May apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources for any and all of the purposes authorized in this Part; may extend or distribute the funds in accordance with directions and requirements attached thereto or imposed thereon by the federal agency, the State of North Carolina or any political subdivision thereof, or any public or private lender or donor; and may give such evidences of indebtedness as shall be required, but no indebtedness of any kind incurred or created by the Agency shall constitute an indebtedness of the State of North Carolina or any political subdivision thereof, and no such indebtedness shall

involve or be secured by the faith, credit or taxing power of the State of North Carolina or any political subdivision thereof. At no time may the total outstanding indebtedness of the Agency, excluding bond indebtedness, exceed five hundred thousand dollars (\$500,000) without approval of the Advisory Budget Commission;

(6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Agency and incident to the administration and operation thereof, and may pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(7) Subject to the approval of the Advisory Budget Commission and under such conditions as the Board may deem appropriate to the accomplishment of the purposes of this Part, may distribute in the form of grants, gifts, or loans any of the revenues and earnings received by

the Agency from its operations;

(8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be exercised, and may provide for the creation of such divisions and for the appointment of such committees, and the functions thereof, as the Board deems necessary or expedient in facilitating the business and purposes of the Agency;

- (9) The Board shall be responsible for all management functions of the Agency. The chairman shall serve as the chief executive officer and shall have the responsibility of executing the policies of the Board. The Executive Director shall be the chief operating and administrative officer and shall be responsible for carrying out the decisions made by the Board and its chairman. The Executive Director shall be appointed by the Governor upon the recommendation of the Board and shall serve at the pleasure of the Governor. The salary of the Executive Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. Subject to the approval of the Board, the Executive Director may appoint, employ, dismiss and fix the compensation of such administrative, clerical and other employees as the Board deems necessary to carry out the purposes of this Part; but the salaries of all employees designated by the Board as professional personnel shall be fixed by the Governor; and any employee who serves as the director of any division of the agency which may be established by the Board shall be appointed with the additional approval of the Secretary of Administration. There shall be an executive committee consisting of three of the appointed members and three of the ex officio members elected by the Board and the chairman of the Board, who shall serve as chairman of the executive committee. The executive committee may do all acts which are authorized by the bylaws of the Agency. Members of the executive committee shall serve until their successors are elected:
- (10) May do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section; and

(11) May do any and all things necessary to accomplish the purposes of this

Nothing herein authorizes the Agency to exercise any control over any public noncommercial broadcast licensee, its staff or facilities or over any community antenna television system (Cable TV; CATV), its staff, employees or facilities operating in North Carolina, or the Police Information Network (PIN), its staff, employees or facilities or the Judicial Department.

The property of the Agency shall not be subject to any taxes or assessments.

(1979, c. 900, s. 1.)

§ 143B-426.12. Public Radio Advisory Committee — policy; creation; duties; members. — It is the policy of the State of North Carolina that at least one public radio signal shall be made available to every resident of North Carolina, that there be diversity in the kinds of public radio licensees, that there be a uniform policy for extending State financial aid to stations eligible to participate in federal funds for public radio, that State financial support shall constitute less than one half of the operating budget of any station, that program content shall not be influenced by the State by virtue of State financial support to the stations, and that technical facilities be established and operated to achieve station interconnection.

The Public Radio Advisory Committee of the North Carolina Agency on Public Telecommunications is created. That Committee shall advise the Board on the distribution of State funds to public radio licensees in North Carolina and on any matter which the Board may refer to it. There shall be nine members of said Committee; three of whom shall be representatives selected by the public radio broadcast licensees in the State; six of whom shall be at-large members chosen by the Governor from the general public. The members shall choose one of the at-large members to serve as chairman of the Committee; and that chairman shall serve ex officio as a member of the Board. The terms of the members of

the Committee shall be established by the Board. (1979, c. 900, s. 1.)

§ 143B-426.13. Approval of acquisition and disposition of real property. -Any transaction relating to the acquisition or disposition of any estate or interest in real property by the North Carolina Agency for Public Telecommunications shall be subject to prior review by the Governor and Council of State, and shall become effective only after the transaction has been approved by the Governor and Council of State. Upon the acquisition of an estate in real property by the North Carolina Agency for Public Telecommunications, the fee title or other estate shall vest in and the instrument of conveyance shall name "North Carolina Agency for Public Telecommunications" as grantee, lessee, or transferee. Upon the disposition of an interest or estate in real property, the instrument of lease conveyance or transfer shall be executed by the North Carolina Agency for Public Telecommunications. The approval of any transaction by the Governor or Council of State shall be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and the Council of State, attested by the Governor or by the private secretary to the Governor, reciting the approval, affixed to the instrument of acquisition or transfer; the certificate may be recorded as a part of the instrument, and shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1979, c. 900, s. 1.)

§ 143B-426.14. Issuance of bonds. — (a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, telecommunications equipment or systems or any other matter or thing which the Agency is herein authorized to acquire, construct, equip, maintain, or operate, the Agency may, with the approval of the Advisory Budget Commission, at one time or from time to time issue negotiable revenue bonds of the Agency. The principal and interest of the revenue bonds shall be payable solely from the revenues to be derived from the operation of all or any part of the Agency's properties and facilities. A pledge of the net revenues derived from the operation of specified properties and facilities of the Agency may be made

to secure the payment of the bonds as they mature. Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The bonds and the income therefrom shall be exempt from all taxation within the State. (1979, c. 900, s. 1.)

- § 143B-426.15. Exchange of property; removal of building, etc. The Agency may exchange any property or properties acquired under the authority of this Chapter for other property or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, facilities, equipment, telecommunications systems or other structures, upon the payment of just compensation. (1979, c. 900, s. 1.)
- § 143B-426.16. Treasurer of the Agency. The Board shall select its own treasurer from among the at-large members. The Board shall require a corporate surety bond of the treasurer in an amount fixed by the Board, and the premium or premiums thereon shall be paid by the Board as a necessary expense of the Agency. (1979, c. 900, s. 1.)
- § 143B-426.17. Deposit and disbursement of funds. All Agency funds shall be handled in accordance with the Executive Budget Act. (1979, c. 900, s. 1.)
- § 143B-426.18. Annual audit; copies to be furnished. At least once in each year the State Auditor shall cause to be made a detailed audit of all moneys received and disbursed by the Agency during the preceding year. The audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show complete financial condition of the Agency. A copy of the audit shall be furnished to each member of the Board and to the officers thereof and to the Governor, the Department of Administration and the Attorney General. (1979, c. 900, s. 1.)
- § 143B-426.19. Purchase of supplies, material and equipment. All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are applicable to the North Carolina Agency for Public Telecommunications. (1979, c. 900, s. 1.)
- § 143B-426.20. Liberal construction of Part. It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1979, c. 900, s. 1.)

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-433. Department of Commerce — organization. — The Department of Commerce shall be organized to include:

(1) The State Board of Alcoholic Control, (2) The North Carolina Utilities Commission,
(3) The Employment Security Commission,
(4) The North Carolina Industrial Commission,

(5) State Banking Commission,

(6) Savings and Loan Association Division, (7) The State Savings and Loan Commission,

(8) Credit Union Commission,

(9) The North Carolina Milk Commission,

(10) The North Carolina Mutual Burial Association Commission, (11) North Carolina Cemetery Commission, (12) The North Carolina Rural Electrification Authority,

(13) Board of Science and Technology,

(14) North Carolina Science and Technology Research Center, (15) The North Carolina State Ports Authority, (16) North Carolina National Park, Parkway and Forests Development Council.

(17) Economic Development Board,

(18) Labor Force Development Council,

(19) Energy Policy Council, (20) Energy Division,

(21) Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.

and such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2.)

Editor's Note. — The 1979 amendment, subdivision (13) for one which read, "Science and Technology Committee."

Part 4. Credit Union Commission.

§ 143B-439. Credit Union Commission. — (a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The members of the Credit Union Commission shall elect one of its members to serve as chairman of the Commission to serve for a term to be specified by the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. The Governor shall appoint the seventh member for the same term and in the same manner as the other six members are appointed. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Three members of the Commission shall be persons who have had three years' or more experience as a credit union director or in management of state-chartered credit unions. At least four members shall be appointed as representatives of the borrowing public and may be members of a credit union but shall not be employees of, or directors of any financial institution or have any interest in any financial institution other than as a result of being a depositor or borrower. No two persons on the Commission shall be residents of the same senatorial district. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the chairman of the Credit Union Commission or any three members of the Commission. A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in

G.S. 138-5. In the event that the composition of the Commission on April 30, 1979, does not conform to that prescribed in the preceding sentences, such composition shall be corrected thereafter by appropriate appointments as terms expire and as vacancies occur in the Commission; provided that no person shall serve on the Commission for more than two complete consecutive terms.

(1979, c. 478, s. 3.)

Editor's Note. -

The 1979 amendment substituted "Four" for "three" at the beginning of the seventh sentence and added the eighth sentence and the last

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Part 5. North Carolina Board of Science and Technology.

§ 143B-440. North Carolina Board of Science and Technology; creation; powers and duties. — The North Carolina Board of Science and Technology of the Department of Commerce is created. The Board has the following powers and duties:

(1) To identify, and to support and foster the identification of, important research needs of both public and private agencies, institutions and organizations in North Carolina;

make recommendations concerning policies, procedures, organizational structures and financial requirements that will promote effective use of scientific and technological resources in fulfilling the research needs identified:

(3) To allocate funds available to the Board to support research projects, to purchase research equipment and supplies, to construct or modify research facilities, to employ consultants, and for other purposes necessary or appropriate in discharging the duties of the Board. (1973,

c. 1262, s. 77; 1977, c. 198, ss. 2, 26; 1979, c. 668, s. 1.)

Editor's Note. The 1979 amendment, effective May 1, 1979, rewrote this section.

Science and Technology; § 143B-441. North Carolina Board of membership; organization; compensation; staff services. — The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 13 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; two members from private industry in North Carolina; and two members from public agencies in North Carolina. One member shall be from the membership of the North Carolina Senate, appointed by the Lieutenant Governor; and one member shall be from the membership of the North Carolina House of Representatives, appointed by the Speaker of the House. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

The member of the North Carolina Senate and the member of the North Carolina House of Representatives appointed initially to the Board shall serve for terms expiring June 30, 1981. Thereafter their successors shall serve for terms of two years each. The members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. Of the remaining nine appointments by the Governor, five shall serve for four years expiring June 30, 1983, and four shall serve for two years expiring June 30, 1981; thereafter terms of all nine of these remaining members appointed by the Governor shall be for four years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall serve as chairman of the Board. The vice chairman of the Board shall be designated by the Governor from among the members of the Board. The Science Advisor to the Governor shall serve as executive director of the Board. The Secretary of Commerce or his designee shall serve as secretary

to the Board.

The Governor may remove any member of the Board from office in accordance

with the provisions of G.S. 143B-16.

Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1. All other members of the Board shall receive per diem and travel and subsistence allowances authorized by G.S. 138-5.

A majority of the Board constitutes a quorum for the transaction of business. The Secretary of Commerce shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1.)

Editor's Note. —

The 1979 amendment, effective May 1, 1979, rewrote this section.

Part 6. North Carolina Science and Technology Research Center.

§ 143B-443. Administration by Department of Commerce. — The activities of the North Carolina Science and Technology Research Center will be administered by the Department of Commerce. (1963, c. 846, s. 2; 1967, c. 69; 1977, c. 198, ss. 3, 4, 26; 1979, c. 668, s. 3.)

Editor's Note. — The 1979 amendment, effective May 1, 1979, substituted "Department of Commerce" for "Science and Technology Committee" at the end of the section.

Part 10. North Carolina State Ports Authority.

§ 143B-453. Purposes of Authority. — Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways

thereat as are within the jurisdiction of the federal government.

(3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining

to all transportation rates and rate structures affecting the same.

(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

(5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any

matter coming within the general purposes of said Authority.

(6) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

(7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2; 1953, c. 191, ss. 3, 4; 1977, c. 198, s. 9; 1979,

c. 159, s. 2.)

Editor's Note. -

The 1979 amendment deleted "terminal railroads and facilities" following "harbors of watercraft" in the first sentence.

§ 143B-454. Powers of Authority. — In order to enable it to carry out the

purposes of this Part, the said Authority shall:

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt-line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, excluding terminal railroads;

(1979, c. 159, s. 3.)

Editor's Note.

The 1979 amendment substituted "excluding" for "including" near the end of subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 143B-454.1. Container shipping. — The State Ports Authority shall provide at the ports of Morehead City and Wilmington adequate equipment and facilities including container cranes at each port as needed, in order to maintain existing and future levels of containerized cargo shipping at both ports and provide and encourage growth in handling of containerized cargoes at both ports. (1979, c. 934.)

§ 143B-456. Issuance of bonds. — (a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized, with the approval of the Advisory Budget Commission, at one time or from time to time to issue negotiable revenue bonds of the Authority. The principal and interest of such revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(1979, c. 159, s. 4.)

Editor's Note. -

The 1979 amendment deleted "terminal railroad" preceding "or any other" in the first sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143B-457. Power of eminent domain. — For the acquiring of rights-of-way and property necessary for the construction of structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the Board of Transportation, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5; 1973, c. 507, s. 5; 1977, c. 198, s. 9; 1979, c. 159, s. 5.)

Editor's Note. -

The 1979 amendment deleted "terminal railroads and" following "construction of" near the beginning of the first sentence, and deleted

"or by railroad corporations" following "Board of Transportation" near the end of the first sentence.

§ 143B-458. Exchange of property; removal of buildings, etc. — The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this Article. (1945, c. 1097, s. 6; 1977, c. 198, s. 9; 1979, c. 159, s. 6.)

Editor's Note. —
The 1979 amendment deleted "railroads" preceding "or other structures."

§ 143B-459. Dealing with federal agencies. — The Authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority, for the use by such grantee for any purpose included within the general purposes of this Article, as stated in G.S. 143-217, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the Authority board may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the Authority board is further authorized to transfer and pay over to the United States of America or to the appropriate agency or department thereof, such of the moneys belonging to the Authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any to be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7; 1977, c. 198, s. 9; 1979, c. 159, s. 7.)

Editor's Note. — The 1979 amendment deleted "terminal railroads" preceding "roads, highways" in the second sentence.

§ 143B-460: Repealed by Session Laws 1979, c. 159, s. 8.

Part 11. North Carolina Ports Railway Commission.

§ 143B-469. Creation of Commission. — (a) The North Carolina Ports Railway Commission is hereby created. It shall be governed by a board composed of five members appointed by the Governor, and hereby designated as the Commission.

(b) Members of the Commission shall serve for terms of four years, except that the original members shall be appointed as follows: one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Thereafter, all appointments shall be for terms of four years. Any vacancy occurring in the membership of the board for any cause shall be filled by the Governor for the unexpired term. The Governor shall appoint a chairman from the membership

to serve at his pleasure. The board shall elect one of its members as vice-chairman and shall also elect a secretary and a treasurer who need not be a member of the Commission. The board shall meet upon the call of its chairman. A majority of its members shall constitute a quorum for the transaction of its business.

(c) Members of the Commission shall not be entitled to compensation for their services but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties and shall be compensated as provided in G.S.

138-5(a)(1). (1979, c. 159, s. 1.)

§ 143B-469.1. Powers of Commission. — The Commission shall be an agency of the State with all the powers of a body corporate including the following:

(1) To sue and be sued, to make contracts, and to adopt and use a common

seal and to alter the same as may be deemed expedient;

(2) To rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of all such property, real or personal, as the Commission may deem necessary;

(3) To operate, maintain and control all railway equipment and railway

operations transferred to it by the State Ports Authority

(4) To acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports terminal railroads in addition to those transferred to it by the State Ports Authority with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry goods, wares and merchandise over, along or upon the track of such railway or other conveyance;

(5) To make agreements as to scale of wages, seniority and working conditions with railroad employees, including but not limited to, locomotive engineers, locomotive firemen, switchmen, switch engine foremen and hostlers engaged in the operation and servicing of the

terminal railways and their equipment;

(6) To connect with or cross any other railway upon payment of just compensation and to receive, deliver to and transport the freight, passengers and the cars of common carrier railroads as though it were

an ordinary common carrier;

(7) To appoint, with the approval of the Governor, a general manager of the Commission who shall serve at the pleasure of the board. The salary for the general manager shall be fixed by the Governor with the approval of the Advisory Budget Commission. The general manager shall have the authority to appoint, employ and dismiss such number of employees as may be deemed necessary by the board to accomplish the purposes of this Article. The compensation of such employees shall be fixed by the board;

(8) To establish an office for the transaction of its business at such place or places, as in the opinion of the Commission, shall be advisable or

necessary in carrying out the purposes of this Part;

(9) To pay all necessary costs and expenses involved in and incident to the formation and organization of the Commission, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(10) To apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the State, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing powers of the State, or any political subdivision thereof;

(11) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any manner

coming within the purposes or powers of the Commission;

(12) To acquire rights-of-way and the property necessary for the construction of administration buildings, equipment, servicing facilities, terminal railways and structures, railway crossings, bridges and causeways by purchase, by negotiation or by condemnation, and should the Commission elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Commission, and it may proceed in any manner provided for by the general laws of this State;
(13) To do any and all things necessary to carry out and accomplish the purposes of this Article. (1979, c. 159, s. 1.)

Carolina State Ports Authority shall transfer to franchises, licenses, and leases connected with

Editor's Note. — Session Laws 1979, c. 159, s. railway operations. This transfer shall include 9, provides: "As soon as practicable, the North tracks, yards, equipment, trackage rights, the North Carolina Ports Railway Commission the railway operations. The transfer is subject to its railway equipment, railway property, and G.S. 143B-455."

- § 143B-469.2. Cooperation with Ports Authority. It shall be the duty and responsibility of the Commission to cooperate with the North Carolina State Ports Authority to insure that the State ports shall operate efficiently and effectively and to insure the orderly and effective development of the State ports. (1979, c. 159, s. 1.)
- § 143B-469.3. Commission not required to be a common carrier. None of the powers and duties of the Commission shall be construed as requiring it to become a carrier subject to the Interstate Commerce Act. (1979, c. 159, s. 1.)

ARTICLE 11.

Department of Crime Control and Public Safety.

Part 3. Governor's Crime Commission.

§ 143B-479. Governor's Crime Commission — powers and duties. — (a) The Governor's Crime Commission shall have the following powers and duties:

(1) To serve, along with its adjunct committees, as the chief advisory board to the Governor and to the Secretary of the Department of Crime Control and Public Safety on matters pertaining to the criminal justice

(2) To develop a comprehensive statewide plan for the improvement of criminal justice throughout the State which is consistent with and serves to foster the following established goals of the criminal justice system:

a. To reduce crime,

b. To protect individual rights,

c. To achieve justice,
d. To increase efficiency in the criminal justice system,

e. To promote public safety.

f. To provide for the administration of a fair and humane system which offers reasonable opportunities for adjudicated offenders to develop progressively responsible behavior, and

g. To increase professional skills of criminal justice officers.

(3) To assist and participate with the State and local law-enforcement agencies in improving law enforcement and the administration of criminal justice:

(4) To make studies and recommendations for the improvement of law

enforcement and the administration of criminal justice;

(5) To encourage public support and respect for the criminal justice system in North Carolina;

(6) To seek ways to continue to make North Carolina a safe and secure State

for its citizens;

(7) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work:

(8) To set objectives and priorities for the improvement of law enforcement

and criminal justice throughout the State;

(9) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary;

(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to G.S. 143B-480; and

(11) To serve as the primary channel through which local law-enforcement departments and citizens can lend their advice, and state their needs, to the Department of Crime Control and Public Safety.

(1979, c. 107, s. 11.)

Editor's Note. -The 1979 amendment substituted "G.S. amendment, it is not set out. 143B-480" for "G.S. 143B-339" in subdivision (10) of subsection (a).

As subsection (b) was not changed by the

Part 5. Civil Air Patrol.

§ 143B-490. Civil Air Patrol Division — powers and duties. — (a) There is hereby established, within the Department of Crime Control and Public Safety, the Civil Air Patrol Division, which shall be organized and staffed in accordance with this Part and within the limits of authorized appropriations.

(b) The Civil Air Patrol Division shall:

(1) Receive and supervise the expenditure of State funds provided by the General Assembly or otherwise secured by the State of North Carolina for the use and benefit of the North Carolina Wing-Civil Air Patrol;

(2) Supervise the maintenance and use of State provided facilities and equipment by the North Carolina Wing-Civil Air Patrol;

(3) Receive, from State and local governments, their agencies, and private citizens, requests for State approval for assistance by the North Carolina Wing-Civil Air Patrol in natural or man-made disasters or other emergency situations. Such State requested and approved missions shall be approved or denied by the Secretary of Crime Control and Public Safety or his designee under such rules, terms and conditions as are adopted by the Department. (1979, c. 516, s. 1.)

§ 143B-491. Personnel and benefits. — (a) The Wing Commander of the North Carolina Wing-Civil Air Patrol shall certify to the Secretary or his designee those senior members, 18 years of age or older, and who are in good standing, as senior members eligible for benefits. The Wing Commander shall provide the Secretary with two copies of the certification. The Secretary shall acknowledge receipt of, sign, and date both copies and return one to the Wing Commander. The Wing Commander shall, in the form and manner provided above, notify the Secretary of any changes in personnel within 30 days thereof. Upon the Secretary's signature, those members listed on the certification shall be eligible for the benefits listed below.

(b) Those members of the North Carolina Wing-Civil Air Patrol certified under subsection (a) of this section shall be deemed and considered employees of the Department of Crime Control and Public Safety for workers' compensation purposes, and for no other purposes, while performing duties incident to a State requested and approved mission. Such period of employment shall not extend to said members while performing duties incident to a United States Air Force authorized mission or any other Wing activities. (1979, c. 516,

s. 1; c. 714, s. 2.)

Editor's Note. — The 1979 amendment, compensation" for "workmen's compensation" effective July 1, 1979, substituted "workers" in subsection (b).

§ 143B-492. State liability. — Unless otherwise specifically provided, the members of the North Carolina Wing-Civil Air Patrol shall serve without compensation and shall not be entitled to the benefits of the retirement system for teachers and State employees as set forth in Chapter 135 of the General Statutes. The provisions of Article 31 of Chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the North Carolina Wing-Civil Air Patrol, and the State or its agencies shall not in any manner be liable for injury or damage to any person, firm, or corporation by reason of the acts of the North Carolina Wing-Civil Air Patrol, its subdivisions or any of the members or officers thereof. The State shall not in any manner be liable for any of the contracts, debts, or obligations of the said organization. (1979, c. 516, s. 1.)

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal, Fish, Insect, Stone, Reptile and Rock.

Sec.
145-9. State reptile.
145-10. State rock.

§ 145-9. State reptile. — The turtle is adopted as the official State reptile of the State of North Carolina, and the eastern box turtle is designated as the emblem representing the turtles inhabiting North Carolina. (1979, c. 154, s. 1.)

§ 145-10. State rock. — Granite is adopted as the official State rock of the State of North Carolina. (1979, c. 906, s. 1)

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE SUBCHAPTER II. ALLOCATED STATE LANDS.

LANDS.

Article 2.

Article 6.

Dispositions.

Acquisitions.

146-6. Title to land raised from navigable water. 146-25.1. Proposals to be secured for leases.

Article 3.

Article 7.

Discovery and Reclamation.

Dispositions.

146-17.1. Rewards; reclamation of certain State 146-30. Application of net proceeds. lands; wrongful removal of timber from State lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

For article, "Public Rights and Coastal Zone (M.D.N.C. 1979).

Management," see 51 N.C.L. Rev. 1 (1972).

Cited in Roberson v. Dale, 464 F. Supp. 680

ARTICLE 2.

Dispositions.

§ 146-3. What lands may be sold.

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

§ 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.

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

§ 146-6. Title to land raised from navigable water.

(b) If any land is, by act of man, raised above the high watermark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the commission of the act which caused the raising of the land in question shall have been previously approved in the manner provided in subsection (c) of this section. (c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such person shall have 30 days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural causes, no easement to fill shall be required. In such a case the Department shall give the applicant written permission to proceed with the project. If the purpose of the proposed fill is not to reclaim lands lost by natural causes and the Department finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the written permission or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such written permission or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(1979, c. 414.)

Editor's Note. — The 1979 amendment substituted "commission of the act which caused the raising of the land in question" for "Governor and Council of State" in subsection (b), deleted "the commission of the act which caused the raising of the land in question" at the end of subsection (b), and, in subsection (c), substituted "person" for "riparian owner" in the second sentence, rewrote the third sentence,

added the fourth and fifth sentences, and substituted "written permission" for "permit" in two places in the sixth sentence.

As the rest of the section was not changed by the amendment, only subsections (b) and (c) are set out.

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

§ 146-12. Easements in lands covered by water.

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

Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

ARTICLE 3.

Discovery and Reclamation.

§ 146-17.1. Rewards; reclamation of certain State lands; wrongful removal of timber from State lands. — (a) The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, pay any person, firm or corporation who shall provide information that leads to the successful

reclamation of any swamplands or vacant and unappropriated lands of the State, a reward equal to one percent (1%) of the appraised value of the reclaimed land, or one thousand dollars (\$1,000), whichever sum is less. All expenses incurred by the Department pursuant to this subsection shall be paid from the State Land

Fund, unless otherwise provided by the General Assembly.

(b) The Department of Administration, acting on behalf of the State, may, with the approval of the Governor and Council of State, pay any person, firm or corporation who shall provide information that leads to a successful monetary recovery by the State from any person, firm or corporation who wrongfully cuts or removes timber from State lands, a reward equal to one percent (1%) of the amount of said monetary recovery, or one thousand dollars (\$1,000), whichever sum is less. All expenses incurred by the Department pursuant to this subsection shall be paid from said monetary recovery, unless otherwise provided by the General Assembly.

(c) No State employee or official, or other public employee or official, shall be eligible for a reward pursuant to subsections (a) or (b) of this section for providing any information obtained in the normal course of his or her official

duties. (1979, c. 742, s. 1.)

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-25.1. Proposals to be secured for leases.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors. In the event either no proposal or no acceptable proposal is received after advertising in accordance with subsection (a) of this section, the Department may negotiate in the open market for leasing of the needed land.

(1979, c. 43, s. 1.)

As the rest of the section was not changed by Editor's Note. -The 1979 amendment added the second the amendment, only subsection (b) is set out. sentence of subsection (b).

ARTICLE 7. Dispositions.

§ 146-30. Application of net proceeds. — The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands.

lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G.S. 105-296.1, if any; and

(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are approved by the Director of the Budget and the Advisory Budget Commission. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Natural Resources and Community Development shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as approved by the Director of the Budget and the Advisory Budget Commission. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1.)

Editor's Note. —
The 1979 amendment added the second sentence of the first paragraph.

SUBCHAPTER IV. MISCELLANEOUS. ARTICLE 14. General Provisions. § 146-64. Definitions.

Cross Reference. — For a section requiring all tax supervisors upon request to furnish the State a report on all properties listed in the name of unknown owners in order to promote the discovery of State lands as defined by subdivision (6), see § 105-302.1. subdivision (6), see § 105-302.1.

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

Chapter 147.

State Officers.

Article 3.

The Governor.

Sec.

147-54.2. [Repealed.]

Sec.

147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

147-33. Compensation and expenses of Lieutenant Governor.

Article 4.

Secretary of State.

147-37. Secretary of State; fees to be collected. 147-38. [Repealed.]

147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.

147-50.1. Publications of State officials and department heads deposited with Division of State Library.

Article 5.

Auditor.

147-58. Duties and authority of State Auditor.

Article 6.

Treasurer.

147-69.1. Investments authorized for General Fund and Highway Fund assets. 147-69.2. Investments authorized for special funds held by State Treasurer.

147-69.3. Administration of State Treasurer's investment programs.

147-78. Treasurer to select depositories.
147-79. Deposits to be secured; reports of depositories.

ARTICLE 1.

Classification and General Provisions.

§ 147-1. Public State officials classified.

Cited in Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 147-3. Executive officers.

Cited in Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

ARTICLE 3.

The Governor.

\$ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office. — The salary of the Governor shall be forty-seven thousand seven hundred dollars (\$47,700) per annum, payable monthly. He shall be paid annually the sum of ten thousand dollars (\$10,000) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred

in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1964, c. 1001, s. 11071, c. 1082, c. 11072, s. 600; 1077, 20d Section 1126, s. 20; s. 1440 c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5.)

amendment, effective July 1, 1978, increased the contains a severability clause. amount of the expense allowance provided in the second sentence from \$5,000 to \$10,000.

The second 1977, 2nd Sess., amendment, effective July 1, 1978, increased the Governor's salary from \$45,000 to \$47,700 per annum.

Editor's Note. — The first 1977, 2nd Sess., Session Laws 1977, 2nd Sess., c. 1136, s. 45,

§ 147-17. May employ counsel in cases wherein State is interested.

For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

Applied in Nash County Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027 (E.D.N.C. 1978).

§ 147-33. Compensation and expenses of Lieutenant Governor. — The salary of the Lieutenant Governor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of ten thousand dollars (\$10,000). (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913; 1977, c. 802, s. 42.6; 1977, 2nd Sess., c. 1136, s. 40.)

Editor's Note. -

The 1977, 2nd Sess., amendment, effective contains a severability clause. July 1, 1978, increased the Lieutenant Governor's expense allowance from \$4,000 to \$10,000.

Session Laws 1977, 2nd Sess., c. 1136, s. 45,

ARTICLE 4.

Secretary of State.

§ 147-37. Secretary of State; fees to be collected. — When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of two dollars (\$2.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office. (R. C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C. S., s. 3864; 1979, c. 85, s. 2.)

Editor's Note. - The 1979 amendment, effective July 1, 1979, rewrote this section.

§ 147-38: Repealed by Session Laws 1979, c. 85, s. 3, effective July 1, 1979.

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc. — Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

set out below: University of North Carolina at Chapel Hill 25 copies; 2 copies; University of North Carolina at Charlotte University of North Carolina at Greensboro 2 copies; 2 copies; 2 copies; 25 copies; 2 copies; Davidson College
North Carolina Supreme Court Library
North Carolina Central University 2 copies; 2 copies; 5 copies; 2 copies: 2 copies: 2 copies; North Carolina Agricultural and Technical State University . . 2 copies; Legislative Library and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. The provisions in this section shall not be interpreted to include any of the appellate division reports or advance sheets distributed by the Administrative Office of the Courts. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, c. 608, s. 1; c. 852, s. 3; 1973, c. 476, s. 84; c. 598; c. 731, s. 2; c. 776; 1977, c. 377; 1979, c. 591, s. 1.)

Editor's Note. —
The 1979 amendment, effective July 1, 1979, deleted the Library of Congress and the

Department of Cultural Resources from the list of institutions receiving State publications.

§ 147-50.1. Publications of State officials and department heads deposited with Division of State Library. — Every State official and every head of a State department, institution, or agency issuing any document, report, directory, statistical compendium, bibliography, map, rule, regulation, newsletter, pamphlet, brochure, periodical, or other publications shall deposit five copies with the Division of State Library of the Department of Cultural Resources. "Printed materials" are publications produced by any means, including publications issued by private bodies, such as consultant or research firms, under contract with or under the supervision of a State agency. The Division of State Library shall publish a checklist of publications received from State agencies and shall distribute the checklist without charge to all requesting libraries. The Division of State Library shall forward two of the five copies of all publications received from State agencies to the Library of Congress. The provisions of this section do not apply to the appellate division reports and advance sheets distributed by the Administrative Office of the Courts, the S.B.I. Investigative "Bulletin," or administrative materials intended only for the internal use of a State agency. (1979, c. 591, s. 2.)

Editor's Note. — Session Laws 1979, c. 591, s. 4, makes this section effective July 1, 1979.

§ 147-54.2: Repealed by Session Laws 1979, c. 477, s. 2, effective July 1, 1979.

ARTICLE 5.

Auditor.

§ 147-58. Duties and authority of State Auditor. — The duties and authority

of the State Auditor shall be as follows:

(25) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by the State departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 269, s. 1; c. 390; 1969, c. 458, s. 1; 1973, c. 507, s. 5; c. 617, s. 3; c. 1211; c. 1415; 1975, c. 879, s. 46; 1977, c. 996, s. 2; c. 1029, s. 1; 1977, 2nd Sess., c. 1136, s. 36.)

Editor's Note. -

The 1977, 2nd Sess., amendment added subdivision (25).

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (25) are set out.

ARTICLE 6.

Treasurer.

§ 147-69.1. Investments authorized for General Fund and Highway Fund assets. — (a) The Governor and Council of State, with the advice and assistance of the State Treasurer, shall adopt such rules and regulations as shall be necessary and appropriate to implement the provisions of this section.

(b) This section applies to funds held by the State Treasurer to the credit of:

(1) The General Fund;(2) The Highway Fund.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to

meet the current needs and demands on such funds, selecting from among the following:

(1) Obligations of the United States or obligations fully guaranteed both as

to principal and interest by the United States;
(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the Asian Development Bank;

(3) Obligations of the State of North Carolina;

(4) a. Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully collateralized;

b. Certificates of deposit issued by banks organized under the laws of the State of North Carolina, or by any national bank having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, be fully collateralized; c. With respect to savings certificates and certificates of deposit, the

rate of return or investment yield may not be less than that available in the market on United States government or agency

obligations of comparable maturity;

d. Shares of or deposits in any savings and loan association organized under the laws of the State of North Carolina, or any federal savings and loan association having its principal office in North Carolina; provided that any moneys invested in such shares or deposits in excess of the amount insured by the federal government or an agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully secured by surety bonds, or be fully collateralized.

(d) Unless otherwise provided by law, the interest or income received and accruing from all deposits or investments of such cash balances shall be paid into the State's General Fund, except that all interest or income received and accruing on the monthly balance of the Highway Fund shall be paid into the State Highway Fund. The cash balances of the several funds may be combined for deposit or investment purposes; and when such combined deposits or investments are made, the interest or income received and accruing from all deposits or investments shall be prorated among the funds in conformity with applicable law and the rules and regulations adopted by the Governor and Council of State.

(e) The State Treasurer shall cause to be prepared quarterly statements on or before the tenth day of January, April, July and October in each year, which shall show the amount of cash on hand, the amount of money on deposit, the name of each depository, and all investments for which he is in any way responsible. Each quarterly statement shall be delivered to the Governor and Council of State; and a copy shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. **2.2**; 1967, c. 398, s. 1; 1969, c. 125; 1975, c. 482; 1979, c. 467, s. 1; c. 717, s. 1.)

The second 1979 amendment added paragraph Editor's Note. -The first 1979 amendment rewrote this d in subdivision (c)(4). section.

§ 147-69.2. Investments authorized for special funds held by State **Treasurer.** — (a) This section applies to funds held by the State Treasurer to the credit of:

The Teachers' and State Employees' Retirement System,
 The Uniform Judicial Retirement System,
 The Uniform Solicitorial Retirement System,
 The Uniform Clerks of Superior Court Retirement System,
 The Teachers' and State Employees' Hospital and Medical Insurance

(6) The General Assembly Medical and Hospital Care Plan,

(7) The Disability Salary Continuation Plan,(8) The Firemen's Pension Fund,

(8) The Firemen's Pension Fund,
(9) The Local Governmental Employees' Retirement System,
(10) The Law-Enforcement Officers' Benefit and Retirement Fund,
(11) The Escheat Fund,
(12) The Legislative Retirement Fund,
(13) The State Education Assistance Authority,
(14) The State Property Fire Insurance Fund,
(15) The Stock Workmen's Compensation Fund,
(16) The Mutual Workmen's Compensation Fund,
(17) The Public School Insurance Fund,
(18) The Liability Insurance Trust Fund,
(19) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S.

institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, and

(20) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget

- (b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:
 - (1) Any of the investments authorized by G.S. 147-69.1(c); (2) General obligations of other states of the United States;

(3) General obligations of cities, counties and special districts in North

(4) Obligations of any company incorporated within the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;

(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real

estate located within the State of North Carolina;

(6) With respect to assets of the Teachers' and State Employees' Retirement System, the Uniform Judicial Retirement System, the Uniform Solicitorial Retirement System, the Uniform Clerks of Superior Court Retirement System, the Firemen's Pension Fund, the

Local Governmental Employees' Retirement System, and the Law-Enforcement Officers' Benefit and Retirement Fund (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated within the United

States, provided:

a. That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation, as disclosed by its published fiscal annual statements, shall have had an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations, shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for

preferred stock and its fixed charges for the same period;
b. That such corporation shall have no arrears of dividends on its preferred stock;

c. That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act, but such registration shall not be required of the following stocks:

1. The common stock of a bank which is a member of the Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars (\$20,000,000);

2. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars (\$50,000,000);

3. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars (\$50,000,000);

d. That the preferred stock of such corporation, if any be outstanding,

shall qualify for investment under this section;

e. That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;

f. That such corporation shall have paid a cash dividend on its common stock in each year of the 10-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

g. That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or

a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

h. That the total value of common and preferred stocks shall not exceed twenty-five per centum (25%) of the total value of all invested

assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (1½%) of the total value of such assets shall be invested in the stock of a single corporation, and provided further;

2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding

stock of such corporation, and provided further;

3. As used in this subdivision h., value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and

the cost price of all other investments.

(c) With respect to investments authorized by subsection (b)(6), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1. (1979, c. 467, s. 2.)

§ 147-69.3. Administration of State Treasurer's investment programs. — (a) The State Treasurer shall establish, maintain, administer, manage, and operate within the Department of State Treasurer one or more investment programs for the deposit and investment of assets pursuant to the provisions of

G.S. 147-69.1 and G.S. 147-69.2.

(b) Any official, board, commission, or other public authority of the State having custody of any trust funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of such funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments. In the absence of specific statutory provisions to the contrary, any such funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(c) The State Treasurer's investment programs shall be so managed that in the judgment of the State Treasurer funds may be readily converted into cash

when needed

(d) Except as provided by G.S. 147-69.1(d), interest earned on investments shall be credited pro rata to the fund whose assets are invested according to such formula as may be prescribed by the State Treasurer with the approval of the Governor and Council of State.

(e) The State Treasurer shall have full powers as a fiduciary to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities or investments in which any of the programs created pursuant to this section have been

invested, and may reinvest the proceeds from the sale of such securities or investments and any other investable assets of the program.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State

(g) The State Treasurer is authorized to retain the services of such independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge as may be necessary for the proper administration of investment programs created pursuant to this section.

(h) The State Treasurer shall prepare, as of the end of each fiscal year, a

report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, and the Advisory Budget

(i) The State Treasurer's annual report to the General Assembly shall include a full and complete statement of all moneys invested by virtue of the provisions of G.S. 147-69.1 and G.S. 147-69.2, the nature and character of investments

therein, and the revenues derived therefrom.

(j) Subject to the provisions of G.S. 147-69.1(e), the State Treasurer shall adopt such rules and regulations as may be necessary to carry out the provisions of this section. (1979, c. 467, s. 3.)

§ 147-78. Treasurer to select depositories. — The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State. (1925, c. 128, s. 2; 1979, c. 637, s. 4.)

the Treasurer require a bond or collateral Editor's Note. - The 1979 amendment, security from the official depository of the State. effective July 1, 1979, deleted the provision that

§ 147-79. Deposits to be secured; reports of depositories. — (a) The amount of funds deposited by the State Treasurer in an official depository shall be adequately secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the State Treasurer with the approval of the Governor and Council of State. No security is required for the protection of funds remitted to and received by a bank or trust company designated by the State Treasurer under G.S. 142-1 and acting as paying agent for the payment of the principal of or interest on bonds or notes of the State.

(b) Each official depository having deposits required to be secured by subsection (a) of this section may be required to report to the State Treasurer on January 1 and July 1 of each year (or such other dates as he may prescribe) a list of all surety bonds or investment securities securing such deposits. If the State Treasurer finds at any time that any funds of the State are not properly secured, he shall so notify the depository. Upon such notification, the depository shall comply with the applicable law or regulations forthwith.

(c) Violation of the provisions of this section shall be a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1933, c. 461, ss. 1, 1½; 1979, c. 637, s. 3.)

Editor's Note. -The 1979 amendment, effective July 1, 1979, rewrote this section.

Chapter 148.

State Prison System.

Article 3.

Labor of Prisoners.

Sec.

148-30. [Repealed.]

148-33.2. Restitution by prisoners wi work-release privileges.

148-37. Additional facilities authorized; contractual arrangements.

148-42. [Repealed.]

Article 3B.

Facilities and Programs for Youthful Offenders.

148-49.16. Supervision of paroled youthful offenders and revocation of such parole.

Article 4. Paroles.

148-57.1. Restitution as a condition of parole.

Sec

148-58, 148-58.1. [Repealed.]

148-60. [Repealed.]

148-60.2 to 148-62. [Repealed.]

Article 7.

Records, Statistics, Research and Planning.

148-114 to 148-118. [Reserved.]

Article 12.

Interstate Corrections Compact.

148-119. Short title.

148-120. Governor to execute; form of compact.

ARTICLE 2.

Prison Regulations.

§ 148-12. Diagnostic and classification programs.

Editor's Note. -

For an article discussing the presentence diagnostic program in North Carolina, see 9 N.C. Cent. L.J. 133 (1978).

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered

against him, except that the provisions of this act regarding parole shall not apply to persons

Judge Other Than Trial Judge May Impose Sentence. — Where sentencing was delayed for the purpose of a diagnostic evaluation of the defendant under this section, it was not error for a judge other than the trial judge to impose sentence upon the defendant. State v. Sampson, 34 N.C. App. 305, 237 S.E.2d 883 (1977).

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.

Cross Reference. — For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

Amendment Effective July 1, 1980. — Session Laws 1979, c. 760, s. 4, effective July 1, 1980, will rewrite this section to read as follows: "§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc. — (a) The Secretary of Correction may issue regulations regarding the grades of custody in which State prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be

awarded to State prisoners after their discharge or parole.

"(b) With respect to prisoners who are serving prison or jail terms either for felonies that occurred before the effective date of Article 81A of Chapter 15A of the General Statutes, or for misdemeanors regardless of the date of occurrence, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

"(c) With respect to all State prisoners serving prison terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A of the General Statutes, the Secretary of Correction must grant credit toward their terms for good behavior as required by G.S. 15A-1340.7. The provisions of this section shall not apply to persons convicted of Class A or Class B felonies.

"(d) With respect to prisoners serving prison or jail terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A, the Secretary of Correction shall issue regulations authorizing gain time credit to be deducted from the terms of such prisoners, in addition to the good behavior credit authorized by G.S. 15A-1340.7. Gain time credit may be granted for meritorious conduct and shall be granted for performance of work inside or outside the prison or jail. Gain time credit earned pursuant to regulations issued under this subsection shall not be subject to forfeiture for misconduct. Gain time shall be administered to qualified prisoners as follows:

(1) Gained Time I. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform short-term work assignments (requiring a minimum of four hours of actual work per day) shall receive credit for work performed at the rate of two

days per month.

(2) Gained Time II. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform job assignments requiring a minimum of six hours work per day or who perform in part-time work release programs shall receive credit at the rate of four days per month.

(3) Gained Time III. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform job assignments requiring a minimum of six hours per day with requirements for specialized skills or specialized responsibilities, as well as inmates participating in full-time work release shall receive credit at the rate of six days per month.

The Secretary of Correction may, in his discretion, grant gain time credit at a rate greater than the rates specified in this subsection for meritorious conduct or emergency work performed, provided, however, that the rate of gain time granted for emergency work performed shall not exceed 30 days per month, nor shall the rate of gain time granted for meritorious conduct exceed 30 days for each

act of meritorious conduct.

"(e) The Secretary's regulations concerning time deductions as authorized by subsection (b), gain time credit as authorized by subsection (c), and prisoner conduct as required by G.S. 15A-1340.7(b), shall be distributed to and followed by county and district init followed by county and district administrators with regard to sentenced prisoners covered by subsection (b) and (d)."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the

act indicates otherwise.'

ARTICLE 3.

Labor of Prisoners.

§ 148-28. Sentencing prisoners to Central Prison; youthful offenders.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without

regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978.'

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-30: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Department May Deduct Cost of Attorneys' Fees From Earnings of Prisoners on Work-Release. — Under the provisions of this section the Department of Correction may, but is not required to, make deductions from the earnings of a prisoner on work-release and pay to the sentencing court for reimbursement to the State the amount so ordered by the court to reimburse the State for attorney fees paid on behalf of said prisoner. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Cited in State v. Lambert, 40 N.C. App. 418,

252 S.E.2d 855 (1979).

§ 148-33.2. Restitution by prisoners with work-release privileges.

(c) When an active sentence is imposed, the court shall consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission and the Secretary of Correction to be imposed as a condition of attaining work-release privileges. If the court determines that restitution or reparation should not be ordered or recommended as a condition of attaining work-release privileges, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of attaining work-release privileges, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation. (1977, 2nd Sess., c. 1147, s. 33.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "G.S. 15A-1343(d)" for "G.S. 15-199(10)" in the fourth sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Constitutionality. — Since the decision to impose restitution or reparation is discretionary with the trial court, the Secretary and the Parole Commission, and since indigency could be considered in making that decision, subsection (c) of this section and § 148-57.1(c) are not unconstitutional as a denial of equal protection

discriminating against indigent defendants. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Purpose of Section. — The purpose of this section and § 15A-1343(b)(6) is rehabilitation and not additional penalty or punishment, and the sum ordered or recommended must be reasonably related to the damages incurred. If the trial evidence does not support the amount ordered or recommended, then supporting evidence should be required in the sentencing hearing. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Duty of Sentencing Court as Regards Restitution or Restoration as Prerequisite for Work-Release. — The sentencing court is not only authorized but is required by subsection (c) of this section, when an active sentence is imposed, to consider whether, as a further rehabilitative measure, restitution or restoration should be ordered or recommended to the Parole Commission and the Secretary of Correction to be imposed as a condition of attaining work-release privileges. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Conditions Discretionary. — The decision to recommend restitution or reparation is

discretionary, and the trial court is not required to impose such a condition. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Recommendations of Sentencing Court as to Conditions for Grant of Work-Release. — Together subsection (c) of this section and § 15A-1343(b)(6) require that any order or recommendation of the sentencing court for restitution or restoration to the aggrieved party as a condition of attaining work-release privileges must be supported by the evidence. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

§ 148-37. Additional facilities authorized; contractual arrangements.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Any contract made under the authority of this section shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts for receiving federal, county and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8; 1973, c. 1262, s. 10; 1975, c. 879, s. 46; 1977, 2nd Sess., c. 1147, s. 34.)

Editor's Note. -

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons" for

"federal, county or city facilities located in North Carolina" in the first sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 148-42: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without

regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.

Cross Reference. — For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

Amendment Effective July 1, 1980. — Session Laws 1979, c. 760, s. 5, effective July 1, 1980, will repeal subsection (c) of this section and

will amend subsection (b) to read as follows: "(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape or attempt to escape from the State prison system, shall, except as provided in subsection (g) of this section, be punished as a Class J felon.

(1) A prisoner serving a sentence imposed

upon conviction of a felony;

(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) A person who shall have been convicted of a felony and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or

(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b)."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

Cited in State v. Faircloth, 297 N.C. 100, 253

S.E.2d 890 (1979).

§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.

Cross Reference. — For statute providing the maximum punishment for felonies, effective

July 1, 1980, see § 14-1.1.

Amendment Effective July 1, 1980. —
Session Laws 1979, c. 760, s. 5, effective July 1,
1980, will amend this section to read as follows:
"8 148-46.1. Inflicting or assisting in infliction
of self injury to prisoner resulting in
incapacity to perform assigned duties. — Any
person serving a sentence or sentences within
the State prison system who, during the term of
such imprisonment, willfully and intentionally

inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be punished as a Class H felon."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the

act indicates otherwise."

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§ 148-49.10. Purposes of Article.

The purpose of this Article as stated in this section is the same purpose stated in former § 148-49.1 of the old Article 3A. State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

Rights accrued by persons under Repealed Article 3A remain unaffected. State v. Niccum,

293 N.C. 276, 238 S.E.2d 141 (1977).

Article Not Applicable Where Death or a Life Sentence Mandatory. — Neither former Article 3A (repealed) nor this Article of Chapter 148 was intended to apply to convictions or pleas of guilty of crimes for which death or a life sentence is the mandatory punishment. State v.

Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977); State v. Mathis, 293 N.C. 660, 239 S.E.2d 245 (1977); State v. Foster, 293 N.C. 674, 239 S.E.2d 449 (1977).

Retroactive Application. — For a case finding that retroactive application of State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977) would deprive a defendant of due process in that it increased the quantum of punishment for his crime after its commission, see Foster v. Barbour, 462 F. Supp. 582 (W.D.N.C. 1978).

Cited in State v. Drakeford, 37 N.C. App. 340,

246 S.E.3d 55 (1978).

§ 148-49.11. Definitions.

Quoted in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

§ 148-49.12. Treatment of youthful offenders.

Stated in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

§ 148-49.13. Classification studies.

Editor's Note. — For an article discussing the presentence diagnostic program in North Carolina, see 9 N.C. Cent. L.J. 133 (1978).

§ 148-49.14. Sentencing committed youthful offenders.

Statute Requires Determination of Benefit. — To comply with the statutory mandate of this section the sentencing judge must make a determination of whether the defendant would benefit from treatment and supervision as a committed youthful offender. This determination should be based on the trial evidence and evidence presented in the sentencing hearing. State v. Lewis, 38 N.C. App. 108, 247 S.E.2d 282 (1978).

But No Specific Language Is Required. — This section does not require any specific language in order for the "no benefit" finding to be effective. State v. White, 37 N.C. App. 394, 246 S.E.2d 71 (1978).

"No Benefit" Finding Effectual. — Where the sentencing judge made the "no benefit". finding immediately after, but on the same day and virtually at the same time that judgment and notice of appeal were entered, the judgment remained in fieri despite the notice of appeal since the term of court had not expired, and the "no benefit" finding was effectual. In re Tuttle, 36 N.C. App. 222, 243 S.E.2d 434 (1978) (decided under former § 148-49.4).

Reasons for Finding Not Required. — The trial judge was not required to supply supporting reasons for this finding in the record that the defendant would not derive benefit from treatment and supervision as a committed youthful offender. State v. White, 37 N.C. App. 394, 246 S.E.2d 71 (1978).

Fairness to Defendant Required "De Novo" Sentencing Hearing. — Where the trial court failed to make a "no benefit" finding before imposing a prison sentence on a 19 year old defendant, the case was required to be remanded for de novo sentencing hearing. Fairness to the defendant in imposing sentence requires that the resentencing be de novo with the sentencing judge having authority to impose a new sentence rather than limiting resentencing to a determination of whether the youthful offender would benefit from treatment as a committed youthful offender since on resentencing the judge could find that defendant would benefit from treatment as a committed youthful offender and impose a sentence as provided by this section, or make a "no benefit" finding and impose the same sentence, or a lesser sentence, or a greater sentence if based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. State v. Lewis, 38 N.C. App. 108, 247 S.E.2d 282 (1978).

"No Benefit" Finding Necessary before Sentence Imposed. — The trial court erred in imposing a prison sentence on a 19 year old defendant without finding that the youthful offender would not benefit from treatment and supervision as a committed youthful offender. State v. Lewis, 38 N.C. App. 108, 247 S.E.2d 282 (1978).

Quoted in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

Cited in State v. Locklear, 294 N.C. 210, 241 S.E.2d 65 (1978).

§ 148-49.15. Parole of committed youthful offenders.

Stated in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

§ 148-49.16. Supervision of paroled youthful offenders and revocation of such parole.

(b) If at any time before unconditional discharge of a youthful offender the Parole Commission is of the opinion that for proper reason parole should be

revoked, revocation shall proceed under the provisions of Article 85 of Chapter 15A of the General Statutes. After revocation of parole, the Parole Commission may thereafter reinstate parole at such time as in the commission's discretion the youthful offender is ready for reinstatement. Notice to the Secretary of Correction of intent to reinstate parole shall not be required. (1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1975, c. 89; c. 720, s. 2; 1977, c. 732, s. 2; 1977, 2nd Sess., c. 1147, s. 35.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Article 85 of Chapter 15A of the General Statutes" for "Article 4 of

this Chapter" in the first sentence of subsection

As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 4. Paroles.

§ 148-53. Investigators and investigators of cases of prisoners.

Editor's Note. —

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without

regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-57.1. Restitution as a condition of parole.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission to be imposed as a condition of parole. If the court determines that restitution or reparation should not be ordered or recommended as a condition of parole, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of parole, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(1977, 2nd Sess., c. 1147, s. 36.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "G.S. 15A-1343(d)" for "G.S. 15-199(10)" at the end of the fourth sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Constitutionality. - Since the decision to impose restitution or reparation is discretionary with the trial court, the Secretary and the Parole Commission, and since indigency could be (b) If at any time before unconditional discharge of a vouthful effector Parole Commission is of the opinion that for proper reason purple should

considered in making that decision, § 148-33.2(c) and subsection (c) of this section are not unconstitutional as a denial of equal protection discriminating against indigent defendants. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Conditions Discretionary. — The decision to recommend restitution or reparation is discretionary, and the trial court is not required to impose such a condition. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

§§ 148-58, 148-58.1: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-60: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§§ 148-60.2 to 148-62: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. -

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section.

Access to Prison Records.-

In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

Does not Include, etc.-

In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

A State prisoner does not have a constitutional right of access to his prison file. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

However, in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2) that the information is false, and (3) that it is relied on to a constitutionally significant degree. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

§ 148-76. Duties of Records Section.

Access to Prison Records.-

In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

Does not Include, etc.-

In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

A State prisoner does not have a constitutional right of access to his prison file. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

However, in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2) that the information is false, and (3) that it is relied on to a constitutionally significant degree. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

§§ 148-114 to 148-118: Reserved for future codification purposes.

ARTICLE 12.

Interstate Corrections Compact.

§ 148-119. Short title. — This Article shall be known and may be cited as the Interstate Corrections Compact. (1979, c. 623.)

§ 148-120. Governor to execute; form of compact. — The Governor of North Carolina is hereby authorized and requested to execute, on behalf of the State of North Carolina, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise: a. "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. "Sending state" means a state party to this compact in which conviction or court commitment was had.

c. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

d. "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

- e. "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (2)d. above may lawfully be confined.
- (3) a. Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration;

2. Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or

disposal of any products resulting therefrom;

4. Delivery and retaking of inmates;

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

b. The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4) a. Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, Subsection (1) [paragraph a. of subdivision (3)] shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

b. The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

c. Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III, Subsection (1) [paragraph a. of subdivision (3)].

d. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

e. All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

f. Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

g. Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to

its territory.

h. Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

i. The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate

confined pursuant to the terms of this compact.

(5) a. Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

b. An inmate who escapes from an institution in which he is confined

b. An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed

toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen,

the express consent of the appropriate official of the sending state shall

be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1979, c. 623.)

Chapter 150A.

Administrative Procedure Act.

Article 5. Sec.

Publication of Administrative Rules.

150A-59. Filing of rules. 150A-60. Form of rules.

150A-63. Publication of rules.

Sec.

150A-58. Short title and definition.

General Provisions.

§ 150A-1. Scope and policy.

Editor's Note. — For an interpretative analysis of the 912 (1979).

Administrative Procedure Act, see 53 N.C.L. Rev. 833 (1975).

Cited in In re Rogers, 297 N.C. 48, 253 S.E.2d

§ 150A-2. Definitions.

Editor's Note. -

Session Laws 1977, 2nd Sess., c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, provides: "This section and sections 5 [amending § 150A-2] and 7 [amending § 150A-58] of this act shall become effective on October 1, 1977. The remaining sections of this act shall become effective on October 1, 1977, and shall expire on June 30, 1981."

Elements of "Contested Case." - Under the definition of subdivision (2) under this section there are two elements of a "contested case": (1) an agency proceeding; (2) that determined the rights of a party or parties. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C.

App. 699, 252 S.E.2d 109 (1979).

ARTICLE 2.

Rule Making.

§ 150A-9. Minimum procedural requirements.

Construction with Coastal Area Management Act. — The mandatory provisions Coastal Area of the Administrative Procedure Act must be read as complementing the procedural

safeguards in the Coastal Area Management Act of 1974 itself. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 150A-10. Definition.

Amendments to State Guidelines. Amendments to the State guidelines by the Coastal Resources Commission are considered administrative rule-making under this section and thus subject to the comprehensive additional safeguards contained in the Administrative Procedure Act. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Applied in Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44 (1979).

§ 150A-12. Procedure for adoption of rules.

Editor's Note. -

Session Laws 1977, 2nd Sess., c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, provides: "This section and sections 5 [amending § 150A-2] and 7 [amending § 150A-58] of this

act shall become effective on October 1, 1977. The remaining sections of this act shall become effective on October 1, 1977, and shall expire on June 30, 1981."

§ 150A-16. Petition for adoption of rules.

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judical Relief. — Plaintiff collection agency was not entitled to seek declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons where plaintiff failed to exhaust available administrative remedies by petitioning the

Department of Insurance for amendment or repeal of the regulation under this section or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under § 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under § 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44 (1979).

§ 150A-17. Declaratory rulings.

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judicial Relief. — Plaintiff collection agency was not entitled to seek declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under § 150A-16 or

seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under this section, and then by seeking judicial review of an adverse Department of Insurance decision under § 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44 (1979).

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

ARTICLE 3.

Administrative Hearings.

§ 150A-23. Hearing required; notice; intervention.

Editor's Note. -

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

Delay Due to Rehearing Not "Undue Delay".

— The delay caused when the full State Personnel Commission ordered a rehearing of a Department of Transportation employee's dismissal case after the commission declined to accept the recommendation of the hearing officer that a default be entered against the department for its failure to appear was not an undue delay within the meaning of subsection (a) of this section, nor such a delay as could allow the Court of Appeals to treat the order for rehearing as a final agency decision under

§ 150A-43. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

Factual Allegations to Be Specific. — The same rationale applicable in criminal proceedings, that an indictment must charge the offense with sufficient certainty to apprise the defendant of the specific accusation against him so as to enable him to prepare his defense, is applicable to factual allegations in proceedings pursuant to this section. Parrish v. North Carolina Real Estate Licensing Bd., 41 N.C. App. 102, 254 S.E.2d 268 (1979).

The notice requirements in this section must be strictly construed. Parrish v. North Carolina Real Estate Licensing Bd., 41 N.C. App. 102, 254 S.E.2d 268 (1979).

§ 150A-25. Conduct of hearing; answer.

Subsection (a) Permissive, Not Mandatory.

— The language of subsection (a) of this section providing that if a party fails to appear after proper service of notice, the agency may proceed

and render its decision in the absence of that party, is permissive, not mandatory. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

§ 150A-29. Rules of evidence.

Board of Adjustment Not Required to Sound-Record Hearings. — Municipal corporations are specifically excluded from the requirements of this section and § 150A-37 that trial rules of evidence and production of evidence be followed in proceedings before State agencies. Thus a Board of Adjustment is not

§ 150A-30. Official notice.

Cited in Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

§ 150A-37. Official record.

Board of Adjustment Not Required to Sound-Record Hearings. — Municipal corporations are specifically excluded from the requirements of this section and § 150A-29 that trial rules of evidence and production of evidence be followed in proceedings before State

required to sound-record its hearings. Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872 (1978).

Cited in Occidental Life Ins. Co. v. Ingram, 34

N.C. App. 619, 240 S.E.2d 460 (1977).

agencies. Thus a Board of Adjustment is not required to sound-record its hearings. Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872 (1978).

ARTICLE 4.

Judicial Review.

§ 150A-43. Right to judicial review.

Editor's Note. -

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

The Administrative Procedure Act does not preclude entirely the possibility of judicial review by use of the Declaratory Judgment Act or other procedures outside the act. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

"Adequate procedure for judicial review," as those words appear in this section, exists only if the scope of review is equal to that under present Article 4 of this Chapter. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Rule-Making Procedure Not Subject to Judicial Review. — An informal hearing conducted by the Commission to consider whether to initiate proceeding to declare the Yadkin River Basin a capacity use area was no more than the § 143-215.13(c) rule-making type procedure and thus the plaintiffs were not entitled to judicial review under § 150A-43 et seq. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Necessity for Exhaustion of Administrative Remedies. —

Plaintiff collection agency was not entitled to seek declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under § 150A-16 or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under § 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under § 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44 (1979).

Exhaustion of Remedies Not Required in Civil Rights Cases. — Where a state employee asserts civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retains its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156 (1978).

A decision to end a preliminary inquiry is not "a final agency decision in a contested case." Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Delay Due to Rehearing Insufficient to Make Order for Rehearing a Final Decision. — The delay caused when the full State Personnel Commission ordered a rehearing of a Department of Transportation employee's dismissal case after the Commission declined to accept the recommendation of the hearing officer that a default be entered against the Department for its failure to appear was not an undue delay within the meaning of § 150A-23(a), nor such a delay as could allow the Court of

Appeals to treat the order for rehearing as a final agency decision under this section. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

Cited in Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872 (1978); In re Partin, 37 N.C. App. 302, 246 S.E.2d 519 (1978); Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978); Blackwell v. Granville County Dep't of Social Servs., 39 N.C. App. 437, 250 S.E.2d 695 (1979).

§ 150A-44. Right to judicial intervention when agency unreasonably delays decision.

Quoted in Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

§ 150A-46. Contents of petition; copies served on all parties; intervention.

Quoted in In re Partin, 37 N.C. App. 302, 246 S.E.2d 519 (1978).

§ 150A-48. Stay of board order.

This section must be construed, etc.

In accord with original. See Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

This section was meant, etc.

In accord with original. See Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

Stay of Decision Unavailable Prior to "Final Agency Decision." — This section is a vehicle for reinstatement only "before or during the review proceeding." Since according to § 150A-43 review is available only after a "final agency decision," the stay of a decision is similarly only available after a "final agency decision." Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

Exhaustion of Administrative Remedies Not Necessary in Federal Civil Rights Action. -Where a state employee asserts civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retains its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156 (1978).

§ 150A-50. Review by court without jury on the record.

Cited in Blackwell v. Granville County Dep't of Social Servs., 39 N.C. App. 437, 250 S.E.2d 695

§ 150A-51. Scope of review; power of court in disposing of case.

Scope of Review Here Applied as Broader Than in § 58-9.3. - Since the scope of review provided in this Article is substantially broader than that provided by § 58-9.3, the scope of judicial review applicable to a denial by the Commissioner of Insurance of a plan by a domestic insurance company to reorganize under a holding company structure was that provided for in this Article. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Findings of Fact by Judge Not Required. — When the judge of the superior court sits as an appellate court to review the decision of an administrative agency pursuant to this section, the judge is not required to make findings of fact. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Findings of Fact Supported by Competent,

In accord with original. See Faulkner v. North Carolina State Hearing Aid Dealers & Fitters

Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Authority of Judge on Review. — The authority of the judge when reviewing the actions of administrative agencies is limited to affirming, modifying, reversing or remanding the decision of the agency. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Issuance of Injunction Requiring Insurance Commissioner to Act. — The trial court did not exceed its power and authority by issuing its mandatory injunction requiring the Commissioner of Insurance to approve a domestic insurance corporation's plan to reorganize under a holding company structure where the Commissioner acted arbitrarily and capriciously when he disapproved the plan. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Adequate Statement of Reasons for Reversing Decision. — Where the judge in reversing the Hearing Aid Dealers and Fitters

Board's conclusion, simply stated that the facts found by the agency failed "to support its conclusion of law that the petitioner was grossly incompetent within the purview of § 93D-13(a)(2)," the superior court's conclusion constituted a succinct and adequate statement of its reasons for reversing the agency's decision. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Quoted in In re Rogers, 297 N.C. 48, 253

S.E.2d 912 (1979).

Cited in Blackwell v. Granville County Dep't of Social Servs., 39 N.C. App. 437, 250 S.E.2d 695 (1979); High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 150A-52. Appeal to appellate division; obtaining stay of court's decision.

Appeal Must Follow Theory of the Trial. — Where petitioner relied upon jurisdiction under this section before the trial court, petitioner on appeal could not argue that the trial court had original subject matter jurisdiction pursuant to § 7A-240 based upon a constitutional right to a

hearing and judicial review, since an appeal has to follow the theory of the trial. Grissom v. North Carolina Dep't of Revenue, 34 N.C. App. 381, 238 S.E.2d 311 (1977) (decided under former § 143-314).

ARTICLE 5.

Publication of Administrative Rules.

§ 150A-58. Short title and definition.

(c) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government; any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, the Employment Security Commission, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly. (1973, c. 1331, s. 1; 1977, c. 915, s. 7; 1979, c. 541, s. 1.)

Editor's Note. -

The 1979 amendment inserted "the Employment Security Commission" near the middle of the second sentence of subsection (c).

Session Laws 1977, 2nd Sess., c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, provides: "This section and sections 5 [amending

§ 150A-2] and 7 [amending § 150A-58] of this act shall become effective on October 1, 1977. The remaining sections of this act shall become effective on October 1, 1977, and shall expire on June 30, 1981."

As the rest of the section was not affected by amendment, only subsection (c) is set out.

§ 150A-59. Filing of rules.

(c) Rules previously in existence shall be ineffective after January 31, 1976, except that they shall immediately become effective upon filing in accordance with the provisions of this Article. The effectiveness of rules adopted prior to

June 29, 1979, shall not be affected by the imposition of the filing requirement with the Director of Research under G.S. 150A-60(5). (1973, c. 1331, s. 1; 1975, c. 69, ss. 1, 2, 5, 6; 1979, c. 571, s. 1.)

As the rest of the section was not changed by Editor's Note. -The 1979 amendment, effective June 29, 1979, the amendment, only subsection (c) is set out. added the second sentence to subsection (c).

§ 150A-60. Form of rules. — In order to be acceptable for filing, the rule must:

Cite the statute or other authority pursuant to which the rule is adopted;
 Bear a certification by the agency of its adoption;

(3) Cite any prior rule or rules of the agency or its predecessor in authority

(3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;
(4) Be in the physical form specified by the Attorney General; and
(5) Bear a notation by the Director of Research of the General Assembly that the rule has been filed in accordance with Article 6C of Chapter 120 of the General Statutes. This subsection shall not apply to rules adopted by the Industrial Commission or the Utilities Commission. (1973, c. 1981). 1331, s. 1; 1979, c. 571, s. 1.)

Editor's Note. - The 1979 amendment, effective June 29, 1979, added subdivision (5).

§ 150A-63. Publication of rules.

(g) Notwithstanding any other provision of law, the Employment Security Commission shall file within 15 days of adoption for public inspection and publication purposes only all rules adopted by it with the Attorney General. The Attorney General shall compile, make available for inspection, and publish the rules filed under this subsection. (1973, c. 1331, s. 1; c. 69, ss. 3, 7; c. 688, s. 1; 1979, c. 541, s. 2.)

Editor's Note. -The 1979 amendment added subsection (g).

As the rest of the section was not affected by the amendment, only subsection (g) is set out.

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Alleghany (office of coroner abolished): 1979, c. 29; Bertie and Cumberland (office of coroner abolished): 1979, c. 794; Duplin (office of coroner abolished): 1979,

c. 231; Hertford (office of coroner abolished): 1979, c. 281; Tyrrell (office of coroner reestablished): 1977, 2nd Sess., c. 1172, repealing 1975, c. 96.

Chapter 153A. Counties

Article 4.

Form of Government.

Part 3. Organization and Procedures of the Board of Commissioners.

Sec.

153A-40. Regular and special meetings.

Article 5.

Administration.

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

153A-103. Number of employees in offices of sheriff and register of deeds.

Article 6

Delegation and Exercise of the General Police Power.

153A-139. Regulation of traffic at parking areas and driveways.

Article 7.

Taxation.

153A-149. Property taxes; authorized purposes; rate limitation.

Article 8.

County Property.

Part 1. Acquisition of Property.

153A-159. Power of eminent domain conferred.

Article 9.

Special Assessments.

153A-185. Authority make special assessments.

Article 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

153A-212. Cooperation in law-enforcement matters.

Article 12.

Roads and Bridges.

153A-244. Railroad revitalization programs.

Article 13.

Health and Social Services.

Part 1. Health Services.

Sec.

153A-248. Health-related appropriations.

Article 15.

Public Enterprises.

Part 1. General Provisions.

153A-274. Public enterprise defined.

Part 2. Special Provisions for Water and Sewer Services.

153A-284. Power to require connections.

Article 16.

County Service Districts.

153A-301. Purposes for which districts may be established.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

153A-321. Planning agency.

Part 2. Subdivision Regulation.

153A-335, "Subdivision" defined.

Part 3. Zoning.

153A-344. Planning zoning agency; plan: board certification to of commissioners: amendments.

153A-345. Board of adjustment.

Part 4. Building Inspection.

153A-369. Order to take corrective action.

Article 23.

Miscellaneous Provisions.

153A-445. Miscellaneous powers found Chapter 160A.

153A-447. Certain counties may appropriate funds to Western North Carolina Development Association, Inc.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-27. Vacancies on the board of commissioners.

Local Modification. - Polk: 1979, c. 267.

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-40. Regular and special meetings.

(b) The chairman or a majority of the members of the board may at any time call a special meeting of the board of commissioners by signing a written notice stating the time and place of the meeting and the subjects to be considered. The person or persons calling the meeting shall cause the notice to be delivered to the chairman and each other member of the board or left at the usual dwelling place of each at least 48 hours before the meeting and shall cause a copy of the notice to be posted on the courthouse bulletin board at least 48 hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed a written waiver.

If a special meeting is called to deal with an emergency, the notice requirements of this subsection do not apply. However, the person or persons calling such a special meeting shall take reasonable action to inform the other members and the public of the meeting. Only business connected with the emergency may be discussed at a meeting called pursuant to this paragraph.

In addition to the procedures set out in this subsection, a person or persons calling a special or emergency meeting of the board of commissioners shall comply with the notice requirements of Article 33B of General Statutes Chapter 143.

(1977, 2nd Sess., c. 1191, s. 6.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective Oct. 1, 1978, added the third paragraph of subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out. Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

§ 153A-45. Adoption of ordinances.

Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-60. Initiation of alterations by resolution.

For survey of 1977 administrative law For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978). 867 (1978).

ARTICLE 5.

Administration.

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-103. Number of employees in offices of sheriff and register of deeds. — Subject to the limitations set forth below, the board of commissioners may fix the number of salaried employees in the offices of the sheriff and the register of deeds. In exercising the authority granted by this section, the board of commissioners is subject to the following limitations:

(1) Each sheriff and register of deeds elected by the people has the

exclusive right to hire, discharge, and supervise the employees in his office. However, the board of commissioners must approve the appointment by such an officer of a relative by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of a crime involving moral turpitude.

(2) Each sheriff and register of deeds elected by the people is entitled to at least one deputy, who shall be reasonably compensated by the county. The deputy so appointed shall serve at the pleasure of the appointing

Notwithstanding the foregoing provisions of this section, approval of the board of commissioners is not required for the reappointment or continued employment of a near relative of a sheriff or register of deeds who was not related to the appointing officer at the time of initial appointment. (1953, c. 1227, ss. 1, 2; 1969, c. 358, s. 1; 1973, c. 822, s. 1; 1977, c. 36; 1979, c. 551.)

Editor's Note. -The 1979 amendment added the second sentence of subdivision (2).

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

Editor's Note. For article, "Regulating Obscenity Through
the Power to Define and Abate Nuisances," see
14 Wake Forest L. Rev. 1 (1978). § 153A-132. Removal and disposal of abandoned and junked motor vehicles.

Local Modification. — Wake: 1979, c. 375.

§ 153A-139. Regulation of traffic at parking areas and driveways. — The governing body of any county may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominum complex, or commercial office complex or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. (1979, c. 745, s. 1.)

ARTICLE 7.

Taxation.

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.

particular board, commission, office, agency, or activity of the county.

(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other

agencies.

(3) Air Pollution. — To maintain and administer air pollution control programs.

(4) Airports. — To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. — To provide animal protection and control programs.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Preparedness. — To provide for civil preparedness programs.

(10) Debts and Judgments. - To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(11) Fire Protection. — To provide fire protection services and fire prevention programs.

(12) Forest Protection. — To provide forest management and protection

programs.

(13) Health. - To provide for the county's share of maintaining and administering services offered by or through the county or district health department.

(14) Historic Preservation. — To undertake historic preservation programs

and projects.

(15) Hospitals. - To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.

(16) Human Relations. -To undertake human relations programs.

(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or

activities listed in this subsection.

(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. — To establish and maintain public libraries.
(20) Mapping. — To provide for mapping the lands of the county.

(21) Medical Examiner. — To provide for the county medical examiner or coroner.

(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the

county or area mental health department.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. — To establish, support and maintain public

parks and programs of supervised recreation.

(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
(27) Ports and Harbors. — To participate in programs with the North

Carolina Ports Authority and provide for harbor masters.

(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.

(29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108 and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services,

and to acquire and operate landfills.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

projects.
(36) Water Resources. — To participate in federal water resources

development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(1979, c. 619, s. 4.)

Editor's Note. -

The 1979 amendment added "as defined in G.S. 153A-274(2)" at the end of subdivision (29) of subsection (c).

As the rest of the section was not affected by the amendment, only subsection (c) is set out.

Appropriation for Dyslexia School Unauthorized. — An appropriation by the

Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by either subdivision (c)(30) of this section or § 153A-255. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property.

Editor's Note. — For comment, "Urban for Consistency," see 14 Wake Forest L. Rev. 81 Planning and Land Use Regulation: The Need (1978).

§ 153A-159. Power of eminent domain conferred. — In addition to any power conferred by any other general law or local act, each county possesses the power of eminent domain and may acquire by condemnation the fee or any lesser interest in property, either inside or outside the county, for the following purposes:

(1) Establishing, extending, enlarging, or improving any of the public

enterprises listed in G.S. 153A-274.

(2) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(3) Constructing, enlarging, or improving hospital facilities.
(4) Constructing, enlarging, or improving library facilities.

(5) Constructing, enlarging, or improving courthouses, jails, office buildings, fire stations, and other buildings for use by the county or any board, commission, or agency thereof.

(6) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or

improving drainage facilities.

(7) Acquiring designated historic properties, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B.

The power to acquire property by condemnation does not depend on any prior effort to acquire the same property by grant or purchase, nor is the power to negotiate for the grant or purchase of property impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a county may in its discretion use the procedures of Chapter 40, Article 2; or the procedures of Chapter 160A, Article 11; or the procedures of any other general law or local act applicable to the county. (1961, c. 1001, s. 1; 1965, c. 934; 1973, c. 822, s. 1; 1975, c. 265, s. 1; 1979, c. 789, s. 2.)

Editor's Note. —
The 1979 amendment added subdivision (7).

ARTICLE 9. Special Assessments.

§ 153A-185. Authority to make special assessments. — A county may make special assessments against benefited property within the county for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or

improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(3) Acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane

protection works;

(4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project. (1963, c. 985, s. 1; 1965, c. 714; 1969, c. 474, s. 1; 1973, c. 822, s. 1; 1975, c. 487, s. 1; 1979, c. 619, s. 11.)

Cross References. — As to applicability to assessments levied by water and sewer authorities established pursuant to Chapter 162A, Article 1, see G.S. § 162A-6.

Editor's Note. -

The 1979 amendment inserted "collection" near the middle of subdivision (2), and added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (2).

§ 153A-195. Hearing on preliminary assessment roll; confirmation; lien.

Cross References. — As to meaning of term "county tax collector," see G.S. § 162A-6.

§ 153A-196. Publication of notice of confirmation of assessment roll.

Cross References. — As to meaning of term "county tax collector," see G.S. § 162A-6.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

§ 153A-212. Cooperation in law-enforcement matters. — A county may cooperate with the State and other local governments in law-enforcement matters, as permitted by G.S. 160A-283 (joint auxiliary police), by G.S. 160A-288 (emergency aid), G.S. 160A-288.1 (assistance by State law enforcement officers), and by Chapter 160A, Article 20, Part 1. (1973, c. 822, s. 1; 1979, c. 639, s. 2.)

inserted "the State and" near the beginning of the section, and "G.S. 160A-288.1 (assistance by

Editor's Note. — The 1979 amendment State law enforcement officers)" near the end of the section.

§ 153A-221. Minimum standards.

Cross Reference. — As to detention of juvenile detention in holdover facilities meeting the \$7A-576.

juvenile detention home is available, see

§ 153A-222. Inspections of local confinement facilities.

juveniles in holdover facilities inspected available, see § 7A-576. pursuant to §§ 108-79 through 108-81 and this

Cross Reference. - As to detention of section where no juvenile detention home is

Article 12.

Roads and Bridges.

§ 153A-240. Naming roads and assigning street numbers unincorporated areas.

Local Modification. — Guilford: 1979, c. 283.

§ 153A-241. Closing public roads or easements.

Local Modification. — Guilford: 1979, c. 282.

§ 153A-244. Railroad revitalization programs. — Any county is authorized to participate in State and federal railroad revitalization programs necessary to insure continued or improved rail service to the county, as are authorized in Article 2D of Chapter 136 of the General Statutes. County participation includes the authority to enter into contracts with the North Carolina Department of Transportation to provide for the nonfederal matching funds for railroad revitalization programs. Such funds may be comprised of State funds distributed to the counties under the provisions of G.S. 136-44.38 and of county funds. County governments are also authorized to levy local property tax for railroad revitalization programs subject to G.S. 153A-149(d). County funds for any project may not exceed ten percent (10%) of total project costs. (1979, c. 658, s.

ARTICLE 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-248. Health-related appropriations. — (a) A county may appropriate

revenues not otherwise limited as to use by law:

(1) To a licensed facility for the mentally retarded, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the facility is available to residents of the county. The facility need not be located within the county.

(2) To a sheltered workshop or other private, nonprofit, charitable organization offering work or training activities to the physically or mentally handicapped, and may otherwise assist such an organization.

(3) To an orthopedic hospital, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the hospital is available to residents of the county. The hospital need not be located

within the county.

(4) To a training center or other private, nonprofit, charitable organization offering education, treatment, rehabilitation, or developmental programs to the physically or mentally handicapped, and may otherwise assist such organizations; provided, however, such action shall be with the concurrence of the county board of education; and provided, further, that within 30 days after receipt of the request for concurrence, the county board of education shall notify the board of county commissioners whether it concurs, and should it fail to so notify the board of county commissioners within such period, it shall be deemed to have concurred.

(b) The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the board of commissioners shall require that the recipient account for the appropriation at the close of the fiscal year. (1967, cc. 464, 1074; 1969, c. 802; 1973, c. 822, s. 1; 1977, c. 474; 1979, c. 1074, s. 2.)

Editor's Note. -

The 1979 amendment added subdivision (4) to subsection (a).

Legislative Intent. — The General Assembly has consistently delegated specific responsibility for the special education of learning-disabled children to the State and local boards of education. Given this pattern of specific and comprehensive legislation in that field it is highly unlikely the General Assembly intended, by enacting subdivision (a)(2) of this section, to authorize county boards of commissioners to appropriate funds directly to schools for dyslexic children. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

The sheltered workshop is designed to deal with health problems fundamentally different from those presented by dyslexic children. As a consequence the objectives, organizational structure, and therapeutic philosophy of a sheltered workshop are markedly different from those of a school for dyslexic children. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Subdivision (a)(2) Inapplicable Learning-Disabled Children. - While the general terms of subdivision (a)(2) of this section could conceivably be construed to address the problem of inadequate educational opportunities for learning-disabled children in the school system, it is evident that the specific remedies prescribed in §§ 115-315.7, et seq., 115-377, and 115-384 are controlling. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

School for Dyslexic Children Not within Ambit of Sheltered Workshop Provision. - An appropriation to a school for dyslexic children does not come within the ambit of this section authorizing appropriations to sheltered workshops and like institutions which provide work or training for the physically and mentally handicapped. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Subdivision (a)(2) of this section cannot be reasonably interpreted to encompass schools N.C. 86, 253 S.E.2d 898 (1979).

Appropriation for Dyslexic School Unauthorized. - An appropriation by the Gaston County Board of Commissioners to the

for dyslexic children. Hughey v. Cloninger, 297 Dyslexia School of North Carolina was not authorized by subdivision (a)(2) of this section. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898

Part 2. Social Service Provisions.

§ 153A-255. Authority to provide social service programs.

Gaston County Board of Commissioners to the S.E.2d 898 (1979). Dyslexia School of North Carolina was not

Appropriation for Dyslexic School authorized by either § 153A-149(c)(30) or this Unauthorized. - An appropriation by the section. Hughey v. Cloninger, 297 N.C. 86, 253

ARTICLE 14.

Libraries.

§ 153A-265. Library board of trustees.

Local Modification. — Burke: 1977, 2nd Sess., c. 1168.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined. — As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems, (2) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,(5) Off-street parking facilities,

(6) Public transportation systems. (1965, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1: 1979. c. 619. s. 1.)

Editor's Note. -The 1979 amendment added "of all types, including septic tank systems or other on-site

collection or disposal facilities or systems" at the end of subdivision (2).

Part 2. Special Provisions for Water and Sewer Services.

§ 153A-284. Power to require connections. — A county may require the owner of improved property located so as to be served by a water line or sewer collection line owned or operated by the county to connect his premises with the water or sewer line and may fix charges for these connections. (1963, c. 985, s. 1; 1965, c. 969, s. 2; 1973, c. 822, s. 1; 1979, c. 619, s. 13.)

Editor's Note. — The 1979 amendment substituted "line" for "system" after "sewer" near the end of the section.

ARTICLE 16.

County Service Districts.

§ 153A-301. Purposes for which districts may be established. — The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works; (2) Fire protection;

(3) Recreation:

(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(5) Solid waste collection and disposal systems;

(6) Water supply and distribution systems;(7) Ambulance and rescue;

(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6.)

Editor's Note. — The first 1979 amendment added subdivision (8).

The second 1979 amendment added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (4).

Session Laws 1979, c. 595, s. 3, provides: "This act applies to existing projects and programs as well as new projects and programs. The

financing or operation, or both, of a project or program authorized by General Statutes Chapter 139, Article 21 of General Statutes Chapter 143, General Statutes Chapter 156, or any other law, may be discontinued under the law by which it was initiated and may be undertaken by a service district as defined in General Statutes Chapter 153A or 160A."

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-321. Planning agency. — A county may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the county and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may

(7) Perform any other related duties that the board of commissioners may

An agency created or designated pursuant to this section may include but shall not be limited to one or more of the following, with any staff that the board of commissioners considers appropriate:

(1) A planning board or commission of any size (not less than three members) or composition considered appropriate, organized in any

manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6.)

Editor's Note. - The 1979 amendment inserted "but shall not be limited to" near the beginning of the second paragraph.

Part 2. Subdivision Regulation.

§ 153A-335. "Subdivision" defined. - For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as

shown in its subdivision regulations;

(1979, c. 611, s. 2.)

substituted "subdivided and recorded" for 349. "platted" near the beginning of subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

Editor's Note. - The 1979 amendment Local Modification. - Transylvania: 1979, c.

By virtue of Session Laws 1979, c. 313, Rutherford should be stricken from the replacement volume.

Part 3. Zoning.

§ 153A-340. Grant of power.

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments. — To exercise the powers conferred by this Part, a county shall create or designate a planning agency under the provisions of this Article or of a local act. The planning agency shall prepare a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the ordinance. Upon completion, the planning agency shall certify the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a certified ordinance from the planning agency. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation. The board of commissioners is not bound by the recommendations, if any, of the planning agency. (1959, c. 1006, s. 1; 1965, c. 194, s. 3; 1973, c. 822, s. 1; 1979, c. 611, s. 3.)

Editor's Note. — The 1979 amendment, in the first paragraph, substituted "proposed zoning ordinance" for "zoning plan" near the beginning of the second sentence, substituted "such" for "a zoning" near the middle of the second sentence; substituted "ordinance" for "plan" at the end of the third sentence, near the middle of

the fourth sentence, near the end of the fifth sentence, and near the beginning of the sixth sentence; and substituted "shall" for "may" near the beginning of the fifth sentence.

For article discussing North Carolina special exception and zoning amendment cases, see 53

N.C.L. Rev. 925 (1975).

§ 153A-345. Board of adjustment.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(e) The board of adjustment, by a vote of four fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review to the superior court shall be taken within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to the appellant, whichever is later. The decision of the board may be delivered to the appellant either by personal service, or registered mail or certified mail turn receipt requested. (1979, c. 611, s. 4; c. 635.) return receipt requested.

Editor's Note. - The first 1979 amendment added "or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance" at the end of the fifth sentence of subsection (b).

The second 1979 amendment, effective January 1, 1980, added the third and fourth sentences of subsection (e).

Part 4. Building Inspection. sentences of subsection (e).

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

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

§ 153A-350. "Building" defined.

Editor's Note. — For comment, "Urban for Consistency," see 14 Wake Forest L. Rev. 81 Planning and Land Use Regulation: The Need (1978).

§ 153A-369. Order to take corrective action. — If, upon a hearing held pursuant to G.S. 153A-368, the inspector finds that the building is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall issue a written order, directed to the owner of the building, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1979, c. 611, s. 5.)

Editor's Note. — The 1979 amendment added the proviso at the end of the section.

ARTICLE 19.

Regional Planning Commissions.

§ 153A-391. Creation; admission of new members.

Stated in Hyde v. Land-Of-Sky Regional Council, 572 F.2d 988 (4th Cir. 1978).

ARTICLE 23

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

Cited in Vaughn v. County of Durham, Durham County Dep't of Social Servs., 34 N.C. App. 416, 240 S.E.2d 456 (1977).

§ 153A-445. Miscellaneous powers found in Chapter 160A. — (a) A county may take action under the following provisions of Chapter 160A:

Chapter 160A, Article 20, Part 1. — Joint Exercise of Powers.
 Chapter 160A, Article 20, Part 2. — Regional Councils of Governments.
 G.S. 160A-487. — Financial support for rescue squads.
 G.S. 160A-488. — Art galleries and museums.
 G.S. 160A-492. — Human relations programs.

Editor's Note. -Subsection (a) of this section is set out to correct an error in subdivision (5) in the Replacement Volume.

§ 153A-447. Certain counties may appropriate funds to Western North Carolina Development Association, Inc. — (a) The board of county commissioners of the counties hereafter named are authorized to appropriate funds to the Western North Carolina Development Association, Inc., for the public good and welfare of said counties. The amount to be expended by each county shall be determined in the discretion of the board of commissioners.

(b) This section shall apply to the counties of Avery, Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey. (1979, c.

674, ss. 1, 2.)

Chapter 156.

Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

Cross Reference. —
As to application to the State Soil and Water
Conservation Commission for grants for

nonfederal costs relating to small watershed projects authorized under Public Law 566 (83rd Congress as amended), see § 139-53 et seq.

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Election and organization under original act.

Local Modification. — Pitt County Drainage District: 1979, c. 817.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1979

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1979 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

Rufus L. Edmisten
Attorney General of North Carolina



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Local Modification — Fig. County Designates

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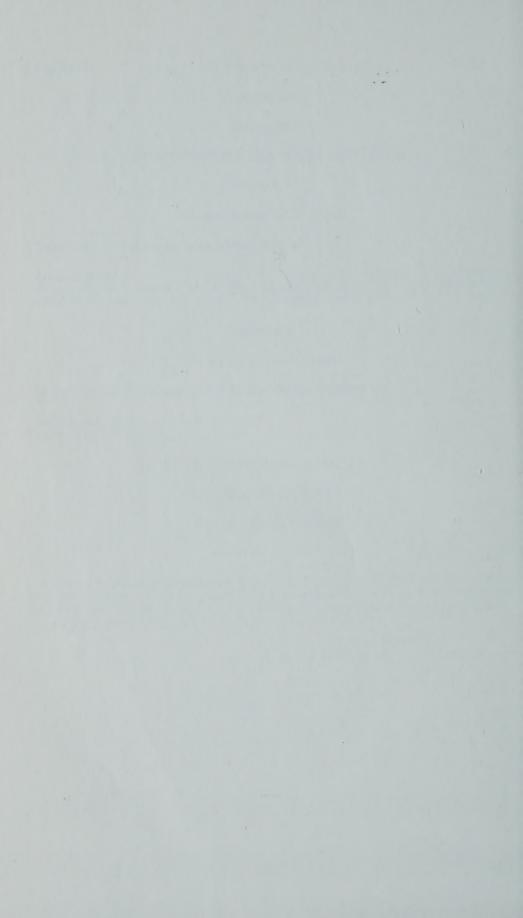
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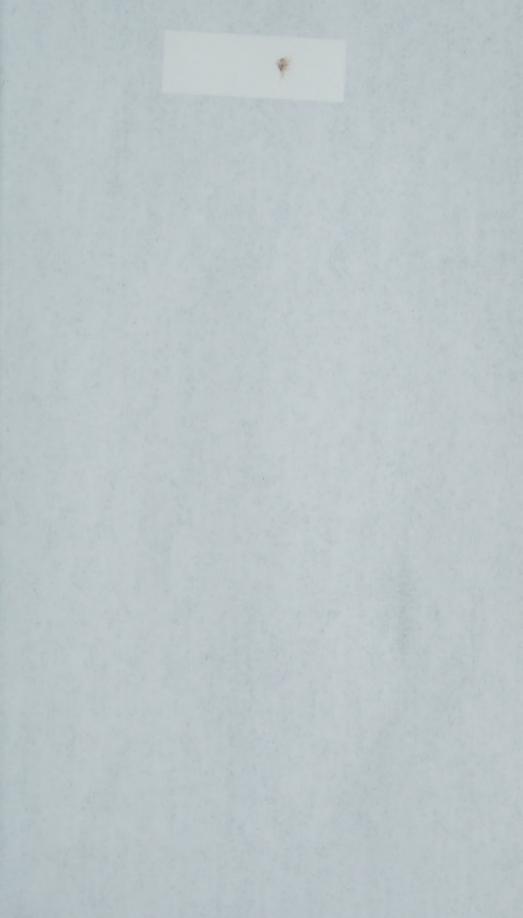
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t, Rufus L. Edmisten. Attorney General of North Caroline, 6. hereby certify that the foregoing 1979 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Carolina under the appearation of the Apparament of Justice of the State of North Carolina.

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